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CURRENT TOPICS

Charitable Trusts

NOT all the recommendations of the Nathan Committee on the Law and Practice relating to Charitable Trusts, which reported in December, 1952, have been adopted by the Government in its White Paper on the subject published on 27th July (Cmd. 9538, 9d.). Contrary to the Committee's finding, it is the Government view that the Charity Commission should be a whole-time body, with a predominantly legal composition, strengthened by a non-legal element. Three non-parliamentary commissioners, of whom two would possess legal qualifications either as solicitors or barristers, are envisaged. The Government agree, however, that a Minister should be appointed to represent the commissioners in Parliament, and they state that the Home Secretary would undertake these functions. They also agree that some relaxation of the existing powers to alter trusts is required, but they wish to place special emphasis on the area and on the category of persons which the founder wished to benefit. Subject to that, they think the scheme-making authority should have as wide a discretion as possible, once it is necessary to alter the objects of a trust at all, to apply the endowment as may be best, in the changed circumstances, to effect the founder's aims. The Government agree that trustees of various charities, whether operating in the same area or having the same purpose, should be enabled to spend money on common services or on working out a scheme for a merger, with the approval of the commissioners or of the Minister of Education. The Government hope to take powers to simplify the procedure by which charity trustees can obtain wider powers of investment. In a written answer by the Financial Secretary to the Treasury to a question in the Commons on 27th July, it was stated that the Government have decided that any general extension of the powers of investment of trustees would not be desirable. This had been suggested by the Nathan Committee. The Government propose, however, to make some minor amendments to the trustee list. The full terms of the statement are set out at p. 546, *post*.

Further Restrictions on Hire-Purchase

THE hire-purchase restrictions announced in the House of Commons on 25th July, made by an Order amending the Hire-Purchase and Credit Sale Agreements (Control) Order, 1955, are effected mainly by an increase in the minimum initial deposit from 15 per cent. to 33⅓ per cent. of the cash price for certain classes of goods. The classes of goods for which the deposit is increased to 33⅓ per cent. include radio and television sets, gramophones, washing machines, vacuum cleaners, refrigerators, cameras, binoculars, cars, motor cycles and auxiliary units for power-assisted cycles. The deposit remains 15 per cent. in the case (*inter alia*) of domestic furniture, floor coverings, mattresses, cookers, water heaters, wash boilers, perambulators, caravans, pedal cycles, clocks and watches. The maximum periods for payment of the balance are unchanged. An agreement may now include both goods specifically controlled under the Order and other goods. In such a case the other goods in the agreement are brought within the scope of the Order, the terms prescribed

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for them being the lowest deposit and longest payment period for any controlled goods in the same agreement. If an agreement provides for payment in a shorter period than the maximum allowed by the Order, it may subsequently be altered to extend the period up to that maximum. The amount of any allowance for goods taken in part exchange, which may be taken into account in calculating the deposit, must be reasonable in relation to the value of such goods. The new Order, which came into force on 26th July, 1955, is the Hire-Purchase and Credit Sale Agreements (Control) (Amendment) Order, 1955 (S.I. 1955 No. 1130).

Legal Aid Costs

IN *Copeland* v. *Houlton*, on 28th July, it was held by WYNN PARRY, J., that the costs of conveyancing incurred in carrying out an order made on the compromise of an action between a father and daughter as to the ownership of a house, which had been disallowed by the master, should be allowed on a taxation under the Legal Aid and Advice Act, 1949, as being costs necessarily incurred " in giving effect to a compromise . . . to bring to an end any proceedings " within the meaning of s. 1 (5) of the Act (*The Times*, 29th July).

Professional Retirement: Tax Proposal

SOLICITORS and other professional persons as well as barristers are affected by the recent proposal of the Royal Commission on Taxation that persons assessed on a cash basis (such as barristers) should become liable to pay tax on fees received after retirement. This was emphasised at a meeting of senior members of the Bar on 28th July, where it was said that those present would not benefit appreciably by the Commission's recommendation for income tax relief on payments made by the self-employed towards retirement benefits, and would be severely prejudiced by the proposal that they should pay tax on fees received after retirement. It was agreed that a person who had been assessed on the present cash basis for, say, ten years, should at least be given the option either (*a*) to be taxed on the basis of the proposal of the Radcliffe Commission entitling him to take advantage of the reliefs in respect of retirement benefits; or (*b*) to remain on his existing basis entitling him to collect outstanding fees free of tax when he came to the end of his professional career, but without the advantage of relief on payments for retirement benefits.

Clean Air Bill

THE Clean Air Bill, published on 27th July, adopts the principal recommendations in the Report of the Committee on Air Pollution under the chairmanship of Sir Hugh Beaver (Cmd. 9322). The report recommended a long-term policy to reduce smoke in heavily populated areas by up to 80 per cent. in 10 to 15 years. The emission of dark smoke from any chimney will be prohibited. " Dark Smoke " is defined in cl. 28 (2) as smoke which is as dark as shade 2 of the Ringelmann Chart. The Minister may, by regulation, grant exemptions for specified periods. It will be a defence to prove that the emission of dark smoke was solely due to: (*a*) the lighting-up of a furnace from cold; (*b*) a mechanical failure which could not reasonably have been prevented; (*c*) the impracticability of obtaining suitable fuel; or (*d*) the unsatisfactory nature of the furnace, and the impracticability of modifying it at reasonable cost. (This provision will lapse after seven years.) No new furnace (other than a domestic furnace) may be installed unless it is, so far as practicable, capable of being operated continuously without emitting any smoke. Users of existing furnaces (other than domestic furnaces) are required to take all practicable steps to minimise the emission of grit and dust. All new furnaces, which burn pulverised fuel or solid fuel in big quantities, are required to be fitted with equipment to arrest grit and dust. Local authorities are empowered, by order, to designate " Smoke Control Areas." In such areas, the emission of any kind of smoke from the chimney of any building (unless specifically exempted) will be prohibited. Such orders will require confirmation by the Minister. In a " Smoke Control Area," owners or occupiers of existing private dwellings are to receive grants towards the cost of adapting or replacing their grates and stoves, so as to enable smokeless fuel to be used. The grants will cover not less than 70 per cent. of such approved expenditure. The Exchequer will pay 40 per cent. and the local authority at least 30 per cent.

Knowledge of the Law

A COMPLAINT was made by a correspondent in *The Times* of 27th July that the common law is too remote from the common people, " whose only knowledge of the law is that ignorance of it is no excuse." Approaching the matter with a healthy sense that the law exists for the benefit of laymen, who ought to be given a chance of understanding it, one is bound to give careful consideration to the remedy proposed. " In 1955 B.C. (*circa*)," she wrote, " Hammurabi set up his code in public, and in 450 B.C. Roman law, known hitherto only to magistrates and experts, was written down and set up for all to read and its essentials learnt by schoolboys." Britain, the writer thought, could learn from Hammurabi, as Rome did. We do not suppose that she had in mind the setting up of the common law on notice boards in the parks like those on which park byelaws are often displayed. There are, however, other ways in which the common law is made known to the common people, as effectively, considering the complexities of modern life, as it was in the days of Hammurabi. There are copies of Halsbury's Laws of England and other text-books in the public libraries, government publications and wireless talks expound the law in simple language, and the subject has its place in juvenile and adult education. In the sense that there is not enough of all this, there is reason to believe that here, as ever, the customer is right.

Administrative Law

NUMBER 1 of the second volume of the *British Journal of Administrative Law* (Shaw and Sons, Ltd.; Jordan and Sons, Ltd.; quarterly; 45s. per annum) is particularly interesting after the industrial disputes of the last few months and the recent controversies about trade courts revived by the report of the Monopolies Commission. Full reports of proceedings before the Industrial Disputes Tribunal give prominence to the former question, and the editor promises authoritative articles in future issues on the question of the adequacy of existing industrial disputes settlement procedure. In the meantime, he recommends the setting up of a permanent Industrial Appeals Court to sit in public, to which recourse should be had prior to strike action. The Right Hon. Sir WILLIAM PATRICK SPENS, Q.C., M.P., Mr. S. A. DE SMITH (Reader in Public Law in the University of London), and Mr. M. R. R. DANES, Ph.D., LL.M., all offer substantial contributions to the debate on the reform of British Administrative Law, recently revived by the Inns of Court Conservative and Unionist Society. In addition, there is a remarkably full, though of necessity not comprehensive, list of domestic tribunals in Great Britain, with the authority under which they are established, their composition, jurisdiction, sanctions and location, and the extent to which legal representation is allowed.

BURDEN OF PROOF AND PRIVATE STREET WORKS

RULES as to the burden of proof can be elaborated almost *ad infinitum*, but generally speaking in civil cases their importance is not often significant. In *Robins* v. *National Trust Co.* [1927] A.C. 515, at p. 520, it was said that the proper test as to burden of proof is which party would be successful if no evidence at all were given. Expressed in another way, the onus of proof put on one party or another is the result of a rebuttable presumption—i.e., a presumption "from which the court may [not must] infer the fact in issue and which puts on the other side [when there is one] the provisional burden of calling evidence or taking the consequences" (*per* Denning, J., as he then was, in *Emanuel* v. *Emanuel* [1945] 2 All E.R. 494, at p. 496).

In a case brought by objectors under ss. 7 and 8 of the Private Street Works Act, 1892 (or an appeal to the Minister under s. 268 of the Public Health Act, 1875, against a notice served on a frontager under s. 150, *ibid.*), the question of onus of proof is often raised. It should first be appreciated that the party having the "right to begin," and who must make out at least a *prima facie* case, is the local authority, although by virtue of his objection the objector may appear to be in the position of a plaintiff or an appellant. This is because the local authority have had to refer the matter of the objection to the court for their determination, and the authority appear as "if they were proceeding summarily against the objectors to enforce payment of a sum of money summarily recoverable" (Private Street Works Act, 1892, s. 8 (1)). On an appeal under the 1875 Act, the objector will, however, be in the normal position of an appellant and will have to begin.

To return to the Private Street Works Act, with which this note is most concerned, as being the more "popular" of the two codes, the local authority must prove—apart from the formalities—that the street which it is proposed to make up is in law a "street" for the purposes of the Act. This means that the authority must prove that the street is not repairable by the inhabitants at large (see definition in s. 5 of the 1892 Act), and the onus of proof is on the authority to establish this negative. He who desires to establish a fact must prove it, and "if the assertion of a negative is an essential part of the plaintiff's case, the proof of the assertion still rests on the plaintiff" (*per* Bowen, L.J., in the well known case of *Abrath* v. *North Eastern Railway Co.* (1883), 11 Q.B.D. 440). Consequently, in the recent interesting case of *Huyton-with-Roby U.D.C.* v. *Hunter* [1955] 1 W.L.R. 603; *ante*, p. 354, when the local authority had been unable to produce sufficient evidence to establish that the "street" in question was *not* repairable by the inhabitants at large, such as could outweigh the objectors' evidence (admittedly inconclusive in itself) that the "street" *was* so repairable, the Court of Appeal held that they had failed to discharge the onus of proof on them and the provisional apportionment was quashed. Jelf, J., said, in *Vyner* v. *Wirral R.D.C.* (1909), 73 J.P. 242, that the "onus of proof perpetually shifts in all these cases," and "as the case proceeds, the evidence may first weigh in favour of the view that it is not a public road, and then against it, thus producing a burden—sometimes apparent, sometimes real—which may shift from one party to the other . . . or may remain suspended between them" (*per* Denning, L.J., in the *Huyton* case, at p. 609). This does not mean, however, that the legal presumption that a street is repairable by the inhabitants at large until the contrary is proved (the other way of saying that the *onus probandi* is on the local authority) is satisfied as soon as *prima facie* evidence is given in that behalf—the evidence so given must be adequate to outweigh such evidence as may be adduced to the contrary.

It may be useful to examine the evidence given in the *Huyton* case so as to see how this problem worked out in practice :—

(1) The lane in question was alleged by the authority to be an occupation road only, mainly because a stone at its fork, placed there in 1776, carried an inscription, "Road to Thingwall. No thoroughby." Also on a tithe map of 1840 the way was described as an occupation road.

(2) When Thingwall Manor was conveyed to a new owner early in the 1800's, no grant was made to him of any right of way over the lane—this suggested it was a public way.

(3) There was no evidence of the lane ever having been maintained at the public expense.

It will be remembered that every highway in existence before 1836 was by the common law repairable by the inhabitants at large, and the question that had to be here decided thus resolved itself into a question whether this way—clearly in existence as a *way* of some kind in 1776—was a public highway prior to 1836 (the date of coming into operation of the Highway Act, 1835, and in particular s. 23 thereof). This question of fact was decided by the justices against the local authority, and the Court of Appeal (on appeal from the Divisional Court) refused to interfere with that finding as it could not be said that there was no evidence to support it. The authority had obviously not discharged the onus of proof to the satisfaction of the magistrates, for the correct reason, namely, that their evidence did not sufficiently tip the scales which were already weighted in favour of the objector.

The case is not, perhaps, a surprising decision, nor does it establish any new principle, but it is none the less an interesting example of the effect of the onus of proof on one party to a dispute, both in the specialised context of private street works cases, and in the law of evidence generally. Denning L.J.'s judgment follows logically the arguments used by him in *Emanuel* v. *Emanuel*, *supra*, and also in the extremely clear exposition of the subject he gave in his article "Presumptions and Burdens" at (1945), 61 L.Q.R. 379.

J. F. G.

A Conveyancer's Diary

POWER OF ADVANCEMENT

UNDER the statutory power of advancement contained in s. 32 of the Trustee Act, 1925, trustees are given liberty at any time or times to pay or apply any capital money subject to the trust for the advancement or benefit, in such manner as they may in their absolute discretion think fit, of any person entitled to the capital of the trust property or of any share thereof. This power is exercisable subject to certain conditions, as, e.g., the obtaining of the consent of persons entitled to prior interests and the limitation of the amount which may be paid or applied, and it is subject to the further limitation that it applies only to personalty settlements and not to settlements under the Settled Land Act, 1925. But settlements of the latter kind often provide that this statutory power shall apply to the trusts, or include an express power

in words essentially similar to those which appear in s. 32 (1). One way or another, therefore, the question frequently arises whether a particular payment or application is within the power to " pay or apply for the advancement or benefit of " a beneficiary, and in particular, in the circumstances of the present day, whether an out-and-out payment of capital to an adult beneficiary is authorised by the statutory power or any similarly worded express power.

There is some difference of opinion in the profession on this point. The principal argument for the view that an absolute payment or transfer of trust funds to a beneficiary is not within the power is that the power does not in terms authorise the payment of money to a beneficiary: it only authorises the payment or application of money for the benefit of a beneficiary. (So far as the question which is now under discussion is concerned the reference in this power to " advancement," an expression much narrower than the expression " benefit," may be disregarded.) The argument runs that if it had been intended to include a power to make such a payment in s. 32 (1), it would have been easy enough to do so, either by inserting the word " to " after " pay," or by authorising the trustees to raise and pay capital to a beneficiary in the kind of language used in the books of conveyancing precedents in forms of express powers to raise capital for this purpose.

The force of these arguments should not be underestimated, and I think that thirty years ago, when the statutory power was new (although express powers of similar import were then, of course, not uncommon) they may well have prevailed. But there are decisions of the courts which, to my mind, indicate conclusively that a payment or transfer of property to an adult is in the ordinary way an application of the property for his or her benefit. These are the decisions in *Re Vestey's Settlement* [1951] Ch. 209 and *Re Powles* [1954] 1 W.L.R. 336. *Re Halsted's Will Trusts* [1937] 2 All E.R. 570 is also sometimes spoken of as a helpful decision in this connection, but the purpose for which the trustees in that case desired to exercise their power was the creation of a settlement for the benefit of the beneficiary in relation to whom the power existed and his wife and family, and on its facts the case seems to be rather far removed from the case of an exercise of the power by way of an absolute payment or transfer of property to a beneficiary. The decision is, however, useful as showing, if it need be shown, that the expression " application for the benefit of " is very wide, and that " application " here is not to be construed as *ejusdem generis* with the preceding expression " advancement."

The settlement in the *Vestey* case was of a very complicated nature, and for the present purpose it is enough to say that during a specified period the trustees were directed to pay or apply the income of a particular fund to or in any manner for the support or benefit of all or any one or more of a named class of persons, which class at the relevant time included infants. The trustees in exercise of their discretionary power under this trust resolved that the income of the fund arising in respect of a certain period should " belong " to certain infant members of the class. The trustees further resolved that as none of the income so dealt with was required in the period for the maintenance of these infants, it should be accumulated in accordance with s. 31 of the Trustee Act, 1925. The object of dealing with the income in this way was to avoid a distribution which would attract sur-tax. The trustees evidently felt some doubt whether their exercise of the discretion was a proper one, and applied for directions to the court. Harman, J., held that there were only two things which the trustees could do with the income of the fund, pay it to the adult members of the class, or apply it for the benefit of the infant members of the class, and in his judgment accumulation was not an application for the benefit of the infant members.

The Court of Appeal reversed this decision. It was urged upon the court that the trustees' resolution that the income should " belong " to the infants was both a payment to and an application for the benefit of the infants of the income. On the question whether it was a payment to the infants there was a division of opinion. Sir Raymond Evershed, M.R. (in whose judgment Asquith, L.J., expressed concurrence), thought that it was not, Jenkins, L.J., thought that it was. But all agreed that it was an application for the infants' benefit. So here is a direct decision that trustees who have power to apply moneys for the benefit of certain persons and who resolve that the moneys shall belong to those persons make an application of the moneys for the benefit of those persons. Moreover, the effect of the resolution of the trustees that the moneys should belong to the infants was held to be that the infants thereupon became absolutely entitled to those moneys.

In *Re Powles*, a testatrix gave investments providing £x a year to her trustees upon trust to use the same for the maintenance and general benefit of her son, *F*, during his life or until he should commit a forfeiture, and she further directed that her trustees might in their discretion resort to any part of the capital of the annual sums which she had bequeathed in trust for *F* " and apply the same for his maintenance and general benefit " during his life or until the cesser of his interest. *F* claimed that he was entitled to the capital of the trust fund, and the trustees applied to the court to ascertain the extent of their power. Harman, J., referred to *Vestey's* case, but in his judgment that case, being on a very special power, did not illustrate any principle. As for the case before him, the trustees had power to resort to capital if they thought that the application of it would be for the benefit of *F*, remembering always that *F* had only a protected life interest which, if he anticipated his income, he would forfeit: if, therefore, he created a charge the trustees would have no power to pay capital to him. The learned judge held that, in the circumstances, the trustees could not hand over the money without making any inquiry as to *F's* objects or wishes for its use, but on the other hand he was unwilling to fetter their discretion more than the words required. " If they consider it to be for the general benefit of *F* to have this money, I think that they would be entitled to say: 'we think it better for him to have it than that we should have it'; and if they came to that conclusion who is to say them 'nay'?—not I, certainly, because the testatrix has provided differently."

As to this reference to *Vestey's* case illustrating no general principle, the power there was very special, certainly, but when that decision is analysed it comes down, essentially, to a decision on the construction of the words, which are anything but special, " application for the benefit of." The application of the moneys in that case by way of a resolution that the moneys should belong to certain persons, and the application of moneys by way of trustees paying or transferring them absolutely to a beneficiary, are identical in the essential (as it seems to me) result that the moneys become the absolute property of the object or objects of the exercise of the power. If the former is an application for the benefit of persons (as was held in *Vestey's* case), the latter must also be so. *Vestey's* case is thus, I conceive, authority for the view that an absolute payment or transfer to a beneficiary is an application for the benefit of the beneficiary within the power

in s. 32 of the Trustee Act, 1925, or any similar power. And the decision in *Re Powles* supports this view. If the fact that the beneficiary in that case had only a protected life interest be disregarded (for this only limited the possible period during which the power of applying capital could be exercised), the decision amounts to this: once the trustees were satisfied that it would be for the benefit of the son to have some capital, the power entitled them to make an absolute payment or transfer thereof to him. In other words, "application for the benefit of" includes an absolute transfer or payment to the beneficiary.

My conclusion is that trustees can safely assume that what is commonly called the power of advancement, if it includes a power to apply capital for the benefit of a beneficiary, entitles them to transfer capital to an adult beneficiary provided that they are satisfied that it would be for his or her benefit to do so. This qualification means, of course, that each case must be considered on its own facts and merits—age, means, size of fund, must all be taken into account. But the need to consider each case on its own facts is implicit in the exercise of any fiduciary power.

"A B C"

Landlord and Tenant Notebook

IMPROVEMENT MADE IN PURSUANCE OF A CONTRACT

For some time after the passing of the Landlord and Tenant Act, 1927, Pt. I, lawyers were busy explaining to tenants that that measure was not intended to enable them to reap, in every case, what they had sown; the object was rather to prevent a landlord from reaping what his tenant had sown. As far as compensation for goodwill is concerned, there has been some modification of the position by the enactment of the Landlord and Tenant Act, 1954, Pt. II, with its provision for compensation when an order for a new tenancy cannot be made (s. 37) and its repeal of the Landlord and Tenant Act, 1927, ss. 4 to 7 (Sched. VII to the 1954 Act); but while in the matter of improvement the tenant's lot has been ameliorated, in some respects, by sundry minor amendments to be found in Pt. III of the Landlord and Tenant Act, 1954, the position remains substantially governed by ss. 1 to 3 of the earlier Act.

Owen Owen Estate, Ltd. v. *Livett and Others* [1955] 3 W.L.R. 1 *ante* p. 385, has shown that, in exceptional circumstances, even the proposition that the Act prevents a landlord from reaping what his tenant has sown may be an exaggeration. The exceptional circumstances were these. The plaintiffs held a lease, granted in 1901 for a seventy-two-year term, of the defendants (trustees of a charity). In 1954 they negotiated a sub-lease of the premises in connection with which they served, under the Landlord and Tenant Act, 1927, s. 3, notice of intention to make certain improvements on the defendants on 2nd September of that year. The section is headed "Landlord's right to object"; and what it does is to entitle the landlord to serve notice of objection, whereupon the tenant may apply to the tribunal under the Act for a certificate that the improvement is a "proper" improvement. The tribunal is directed to consider whether it will increase letting value, is reasonable and suitable to the character of the holding and will not diminish the value of other property belonging to the landlord or a superior landlord. But the "objection" put forward by the defendants in *Owen Owen Estate, Ltd.* v. *Livett* (not long before the time limit—three months—would have expired) referred to none of these things; the ground relied on was that on 23rd September the plaintiffs had granted a sub-lease containing a sub-clause by which they agreed to do the very things which they said would be an improvement.

This move was based on s. 2 (1) (*b*). Section 2, headed "Limitation on tenant's right to compensation in certain cases," provides by subs. (1) (*b*) that a tenant shall not be entitled to compensation under that Part of that Act in respect of any improvement made in pursuance of a statutory obligation, or of any improvement which the tenant or his predecessors in title were under an obligation to make *in pursuance of a contract* entered into, whether before or after the passing of the Act for valuable consideration, including a building lease.

The plaintiffs may well have felt embarrassed, of which more later; but they proceeded to make an application for a certificate under s. 3, the tribunal, as the rateable value of the premises exceeded £500 per annum, being the High Court. And the question argued before Upjohn, J., was whether "in pursuance of a contract" in s. 2 (1) (*b*) meant "in pursuance of a contract entered into with the landlord" or included a contract made with a sub-tenant.

It was argued that this was a case for liberal interpretation, and much was made of a passage in Scrutton, L.J.'s judgment in *Simpson* v. *Charrington & Co., Ltd.* [1934] 1 K.B. 64 (C.A.) referring to the pre-Act strong feeling among tenants that if they had at their own expense made improvements rendering the premises more valuable or built up a business making them more valuable it was inequitable that the value should pass to the landlord without compensation to the tenant who had created it: "Parliament appears to have thought it desirable to remedy what it considered this lack of equity." The plaintiffs also cited *Salmon* v. *Duncombe* (1886), 11 App. Cas. 627, and *Fowle* v. *Bell* [1947] K.B. 242 (C.A.); the one does not appear to afford very much support for their contentions: it is true that the Judicial Committee of the Privy Council took the unusual course of rejecting as surplusage words inserted in a Natal Ordinance by a draftsman not familiar with English law, but Lord Hobhouse emphasised that that sort of thing could be only done when intractability of language would reduce an enactment to a nullity. In the other, it was decided that the well-known "(not being a landlord who has become landlord by purchasing the dwelling-house . . .)" exception in para. (*h*) of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933, did not affect plaintiffs who had bought a house with a "sitting tenant" and relet it to the defendants when that tenant had left. This might, indeed, be considered a case of beneficial or liberal construction, though, as MacKinnon, L.J., had pointed out in *Epps* v. *Rothnie* [1945] K.B. 562, if tenants other than sitting tenants were meant to qualify for protection, Parliament might have been content to say "not being a landlord who has purchased a dwelling-house."

But in *Owen Owen Estate, Ltd.* v. *Livett* the plaintiffs were asking the court to cut down the meaning of perfectly general words, and while they were able to urge that in another section, s. 9, authorising contracting out if the contract were made for adequate consideration, the contract between the parties must have been meant, Upjohn, J., found himself unable to accede to their arguments.

No point appears to have been made of the mention of any improvement "made in pursuance of a statutory

obligation" in s. 2 (1) (*b*), preceding the improvement made in pursuance of a contract. It is of interest to note that this qualification has been removed by the Landlord and Tenant Act, 1954, s. 48; and the amendment can be said to be consistent with the object of preventing a landlord from reaping what his tenant has sown. It is not as if the claimant for compensation would be paid twice for the same work: the Agricultural Holdings Act, 1948, by, *inter alia*, ss. 53 and 62, sees to it that certain tenants assisted by public money do not qualify for compensation from their landlords in so far as they have been so assisted; on the other hand, the fact that a landlord has carried out an improvement in compliance with a statutory notice actually qualifies him, in some cases, for compensation from the tenant (s. 9 (1) (*c*) and (*d*)).

The way in which the question was brought before the court in *Owen Owen Estate, Ltd.* v. *Livett* was, indeed, irregular; and if it had not been the case that both parties were anxious to have their rights ascertained at once, Upjohn, J., would not have taken the course he did: that of treating the matter as the hearing of an originating summons under R.S.C., Ord. 54A, under which he asked the plaintiffs to issue a summons for the construction of s. 2 of the Act. Indeed, there was really no reason why the defendants should have served notice of objection under s. 3 (1) at all, or why the plaintiffs should have applied for a certificate under that subsection; it was common ground that the improvement would be a "proper" one and if nothing had been done the question could have awaited decision till after Michaelmas, 1972, when, according to s. 1 (1), the right to compensation would mature (i.e., "at the termination of the tenancy on the tenant quitting the holding"), and the defence would have been that s. 2 (1) (*b*) disqualified the tenants in this case.

R. B.

HERE AND THERE

"BONDS OF EMPIRE"

YOU can't generalise about what used to be called in the noontide of Kipling's day "the bonds of Empire." Some were like the umbilical cord; some were like a tow-rope; some were like a life-line; some, one regrets to admit it, were like the grappling irons thrown out by a boarding-party; at any rate that's how Ireland saw them in her own case. Maybe some were just comic as in a three-legged race, equally awkward for both parties concerned. Anyhow, ever since the Statute of Westminster legalised what less empirical and more analytically minded legislators than ours would have called a contradiction in terms, the tendency to loosen or cut those bonds, whatever their nature, has been notably precipitated. Considering the enormous implications of severance, its consequences have for the most part been curiously undramatic. The greater part of Ireland is now a sovereign independent republic and we have obligingly invented a status whereby Irishmen are neither British subjects nor aliens. Also we post our letters to Eire in the "Country" and not the "Abroad" box. When India cut the tow-rope it threw overboard neither the English language nor the English legal tradition. What happens when a bond is severed depends on the human mind and will. Ships may sail in convoy by agreement as well as by command. Persuasion may be more effective than compulsion. That is what gives its importance to the Commonwealth and Empire Law Conference in London. Everyone knows that in business, personal contacts are everything, casual personal contacts in the widest possible circle. In politics what goes on in the lobbies determines what happens in the Chamber. So with the Commonwealth it is easy and familiar contact on a common ground which must determine its future. Britannia's future may be that of a venerated mother, affectionately linked with her married children and grandchildren scattered over the world; or it may be that of a universal aunt. Whatever it is, living personality and not the letter of any statute or treaty will determine the family relationship. Settlements and trusts have a very useful function but it is not they that hold a family together.

COMMONWEALTH LAW CONFERENCE

THE opening of the Law Conference by the Lord Chancellor illustrated the mutuality of the present relationship. He had but lately returned from Africa where in all the ancient magnificence of his official robes he had inaugurated the Federal Supreme Court of Rhodesia and Nyasaland. (Parenthetically, one was a little puzzled that the embroidered purse of the Great Seal should be borne before him, for the Great Seal, being of constitutional necessity left behind in England in commission, could not be even notionally the travelling companion of its keeper.) In Westminster Hall the delegates came, as it were, to the ancient stone fountain in which first flowed the waters from the spring of the common law. That fountain had not been without its vicissitudes. There had been times when it had been fouled and muddied. The Hall was the scene of the solemn farce of the Duchess of Kingston's trial for bigamy, of the long-drawn out fiasco of the trial of Warren Hastings and of the judicial murder of Sir Thomas More, but the spring had never ceased to flow and even when filth and ordure seemed to choke the basin the waters of the spring itself still ran pure and sooner or later washed away the dirt. Where the Lord Chancellor and the judges of England sat at the southern end of the vast bare Hall, they had on either side of them the very spots where the Courts of Chancery and King's Bench had been in their beginnings and below, towards the north, was the "certain place" where the Common Pleas had set its roots. Here, if anywhere, the delegates could sense the continuity of an idea the adaptability and flexibility of which are the proof that it is alive with a spark of the eternal which is the inner secret of the human soul, for as the Lord Chancellor said, in his opening address, the essential elements of our law are reason and liberty, the recognition, that is, of the human mind and of free will, always standing against the heresy of a predetermined and inevitable doom.

MIXED TOPICS

THE wealth of topics discussed by the delegates ranged over a very wide field—juries and the law's delays and professional ethics and the possibility of a Commonwealth Supreme Court, and the separation of the two branches of the profession and the relations between governments and the legal profession. On this last topic it is worth noting the contrast between the lawyers and the politicians. One delegate, formerly of the South African Bar, recalled the stand made by that Bar against the Government's oppressive policy in its appointment of the judiciary. The idea of a Supreme Court for the Commonwealth may well bear fruit in a transformation and broadening of the Judicial Committee, so that it would no longer be essentially linked with the

assertion of British sovereignty. Such a court, Sir Hartley Shawcross suggested, might well be staffed by the cream of the judicial talent of the Commonwealth and might, as it were, go on circuit, sitting in turn in each of the Commonwealth countries. One of the most interesting discussions reviewed the question of " fusion " of the legal profession and it was instructive to see how strongly appreciated was the case for separation of its branches. In England, owing perhaps to the considerable influx of Continental lawyers nurtured in the tradition of a single professional body of practising lawyers, the idea of fusion has, perhaps, been the subject of a somewhat disproportionate propaganda. Here were delegates with practical experience of both systems in action and there was considerable agreement that fusion saved no costs, since the total amount of work to be done remained the same: whereas separation maintained a higher standard of advocacy, recognising as it did the essential difference between getting up a case and presenting it in court and the practical impossibility of simultaneously shepherding the witnesses into court, arranging papers, dealing with the client's interruptions and concentrating on the course of the case, all with equal virtuosity. The delegate from New South Wales who referred to solicitors as " the Cinderellas of the profession " and applied to them the poet's line about " the short and simple annals of the poor " was, experience suggests, rather underestimating the frequency with which good fairies ameliorate their worldly lot. Whenever the cries of poverty and famine are heard in the legal profession, in London, it is in the Inns of Court and not around the portals of The Law Society.

RICHARD ROE.

REVIEWS

Jordan's Guide to Sound Investment. With a foreword by NORMAN CRUMP, City Editor, *Sunday Times*. 1955. London: Jordan & Sons, Ltd. 2s. net.

This booklet is designed for the absolute novice in matters of investment—for the reader to whom the Stock Exchange and all its works is a complete mystery. It explains how stocks and shares can be bought and sold and what it costs to do so, how to read and understand the financial columns of the newspapers, the differences between gilt-edged stocks, debentures, preference and ordinary shares, and it does so in admirably clear and simple terms. Its greatest virtue, however, is that it does not stop there but expounds, again in simple and convincing terms, the important truth that in a time of inflation such as we have seen for the last forty years the only things that are certain about gilt-edged are that the income will come in every six months and that every payment will be worth less than the last whilst the capital dwindles in like proportion. In other words that good equity shares are the safer investment.

It is likely that most, but perhaps not all, practitioners will themselves be familiar with the contents of this book: they will find it, however, a most admirable one to recommend to those of their clients who are not.

Blundell's Rent Restrictions Cases Annotated. Third Edition and Supplement. Edited by LIONEL A. BLUNDELL, LL.M., of Gray's Inn, Barrister-at-Law; and V. G. WELLINGS, M.A. (Oxon), of Gray's Inn, Barrister-at-Law. 1955. London: Sweet & Maxwell, Ltd. £2 10s. net.

Many hard things have been said about those responsible for rent control legislation; but if they had the illusion under which Mr. Joseph Chamberlain is said to have laboured when introducing the first Workmen's Compensation Act, that no judicial interpretation would be called for, they at least did not disclose it. And the number of decisions annotated in this the third edition of Blundell's Rent Restrictions Cases is now 1203, while the Supplement thereto gives us another dozen. We stress the " annotated " because the work is far more than a mere catalogue of authorities. It is the expositions, the cross-references, the well-chosen extracts from judgments and the like that give the work its value. Here and there some small inaccuracy may have crept in, e.g., the intended assignee in *Swanson* v. *Forton* was not the person to whom the tenant had sub-let the premises furnished (but the headnote in one report is more misleading!); and sometimes one might like to know a little more, e.g., that the 1939 letting in *Capital and Provincial Property Trust* v. *Rice* was a pre-1st September, 1939, letting. But these are minor matters, and both the contents and the arrangement of the book are such that it can fairly be considered indispensable to any practitioner having to do with controlled premises.

The Agricultural Landowner's Handbook on Taxation. Ninth Edition. Part I. Revised by J. G. HASTINGS, Taxation Assistant on the C.L.A. Staff. 1955. London: Country Landowners' Association. 15s., post free. 10s. 6d. to members of the Association.

This edition of the handbook has been divided into two volumes, the first dealing with matters which may be supposed not to be liable to very frequent change. It deals in some detail with Schedule A tax and with capital expenditure allowances, and with Schedule D tax, sur-tax, profits tax and income tax generally as they affect landowners. There are, in addition, chapters on estate duty, valuation of property for duty purposes and the taxation of landed estate companies. The handbook is intended for landowners and not for their professional advisers, and as such it is extremely well done, although the wise reader will continue to consult his professional advisers as necessary. A particularly valuable feature of the book, which is of use both to the layman and to the professional adviser, is that it deals in some detail with the extra-statutory concessions which have been given within this sphere, some of which are not easy to trace from any other source.

Legal Decisions Affecting Bankers. Vol. V, 1937–1946. Edited and annotated by MAURICE MEGRAH, of Gray's Inn, Barrister-at-Law. Issued under the sanction of the Council of the Institute of Bankers. 1955. London: Blades, East & Blades, Ltd., for the Institute of Bankers. 10s., post free, to members; 17s. 6d., post free, to non-members.

This is a collection of reports of decisions which have had a direct bearing on banking law, and it is an inexpensive work of reference for any office which might deal with banking matters.

Although officially this fifth volume carries the series from 1937 to the end of 1946, the first two decisions are of 1925 and 1926; they were not available when vol. IV was published, but are included now to make the work complete.

Estate Duty on Settled Property and Annuities. By GEORGE C. MASON, B.A., of Lincoln's Inn, Barrister-at-Law, and of King's Inns, Dublin, Barrister-at-Law. 1955. London: Jordan & Sons, Ltd.; Shaw & Sons, Ltd. £1 10s. net.

This book sets out to deal only with that aspect of estate duty law which concerns settled property in its various forms and it seems to your reviewer that the inherent difficulty in such an attempt is that estate duty law does not easily divide in such a manner, so that it is necessary to consider, e.g., questions of valuation, aggregation and quick succession relief, with the result that the author might almost as easily have covered a wider field.

The book proceeds, wherever such treatment is appropriate, by setting out in heavy type in the body of the text the relevant statutory provisions and, where possible, fairly extensive extracts are given from reported judgments. A valuable feature, springing no doubt from the qualifications of the author, is the citation of a comparatively large number of Irish decisions which are not readily seen elsewhere.

One or two points of detail may be mentioned; at p. 59, in discussing policies kept up for a donee, the author seems to suggest that the premiums must have been paid with respect to a specific donee, but the Court of Appeal in *D'Avigdor-Goldsmid* v. *Inland Revenue Commissioners* [1951] Ch. 1038 appear to take the view, at pp. 1051–2, that a class of beneficiaries, one of whom would ultimately become entitled, is sufficient. At p. 66, in discussing *Re J. Bibby & Sons, Ltd., Trust Deed* [1952] 2 All E.R. 483, it is stated that service to a firm does not amount to

contribution to any pension scheme, but it seems from p. 487 of the report that it might do so if the employee entered the service on the footing that he would benefit from a pension scheme.

Finally, the author states at p. 181 that if life-tenant and remainderman divide up settled property between them, the part taken by the life-tenant is not a retained benefit but an enlargement. Your reviewer's understanding is to the contrary and that if an enlargement is to be established one must show that any payment to the remainderman did not come out of the settled property.

THE COMMONWEALTH AND EMPIRE LAW CONFERENCE: FURTHER IMPRESSIONS

THE Commonwealth and Empire Law Conference came to an end last Wednesday with a banquet at the Guildhall at which the PRIME MINISTER and the ARCHBISHOP OF CANTERBURY spoke. The speeches were broadcast and there seems little reason to comment on them here except to wish that they all had been as good as the Archbishop's. The last three days of the conference, however, had been full of interest—perhaps because generalities were avoided and practical problems discussed. Even the formal closing of the conference on Wednesday afternoon was made interesting by excellent speeches by LORD RADCLIFFE and Sir HARTLEY SHAWCROSS, in which the future role of the Judicial Committee of the Privy Council was discussed.

The first subject discussed in the second half of the conference was whether the **fusion of the two branches of the profession** was an advantage to the public. In general, speakers spoke for the system prevailing in their own country, although the opponents of fusion were better represented. One result of the discussion was to show that there was perhaps less difference between the two systems than there appeared. In Canada, for instance, where there was fusion, many lawyers practised exclusively as barristers or solicitors and it was always possible for a partner in one firm to consult an expert in a particular branch of law in another firm. Of course, he might be reluctant to do this if it meant losing a client or offending another partner in his own firm.

The arguments in favour of separation of the branches of the profession were these: that it enabled every client to have an expert on the particular subject; that it led to a higher standard of advocacy and better judges; that the standards of the profession were best kept alive by a small compact body; that a barrister was independent and was not likely to be swayed in his judgment of what was best for his client by the personal contacts with him and his witnesses, inevitable with a solicitor; that it enabled a fresh mind to consider the case, and enabled one man to concentrate on advocacy without being worried with papers or getting witnesses to court.

Against all this it was said that under the fused system there was nothing to prevent different members of the firm acting as barrister and solicitor in the same case. As Mr. C. K. GUILD of British Columbia said: "I can have a partner as junior counsel and another partner as attending solicitor and the client pays for all three of us. I see nothing wrong in that." Under this system, too, there was greater co-operation between solicitor and advocate at all stages of the case. The advantages of an open mind could be exaggerated. Once F. E. Smith was appearing before Mr. Justice Darling and had during his opening to consult his junior continually. "I am wondering," said his lordship, "which of two minds completely fresh to the facts will first find out what this case is about." A fresh mind often meant a vacant mind. Some speakers said that while a better service was given to the client under the separated system, it was more expensive and unsuitable for a poor country, but in answer to this it was said that the same amount of work was done in both cases and had to be paid for. Where little money was involved there was no need under any system for more than one man to be employed.

Mr. B. A. HELMORE of New South Wales said that what was needed was an improvement in status of the "lower" branch. At present solicitors were the Cinderellas of the profession. He was reminded of that famous song, the chorus of which went:—

> "It's the same the whole world over:
> It's the poor that gets the blame;
> It's the rich that gets the pleasure;
> Ain't it all a blooming shame?"

What was needed was something equivalent to a Q.C. for solicitors to equalise the status of the two branches.

Until that day came:—

> "Let not ambition mock their useful toil
> Their homely joys, and destiny obscure
> Nor grandeur hear with a disdainful smile
> The short and simple annals of the poor."

Mr. RALPH RISK, a Scottish solicitor, pointed out that it was a mistake to treat the solicitor as the junior partner: he could be compared with the G.P. in medicine. His duty was to prevent trials and if he had been called in soon enough, an action was a sign of failure on his part. The barrister could be compared to a surgeon, and as surgery was the least important part of a medical practice, so appearances in court were the least important part of a legal practice.

The conclusion the chairman drew from the debate was that each country seemed satisfied with its own system and that there was no good reason to sacrifice the knowledge of the workings of their particular system that the lawyers of each country had gained.

Another subject set down for discussion was **legal aid**, but it turned out that no one had anything to say against it and the time was spent by delegates from the Commonwealth asking questions about the workings of the system in this country. It may well be that these unexciting four hours were the most immediately productive of the conference. One at least of the delegates was going to urge the adoption of a similar scheme in his own country. On the other hand, the discussion on **reciprocity of admission throughout the Commonwealth** and on **overseas relations,** where many speakers were heated and several resolutions were passed, was probably the most unproductive. It seemed agreed that reciprocity of admission was pointless when the systems of law throughout the Commonwealth were so different. In Ceylon alone there were five different systems, and the lawyer intending to practise there would have to learn about them first. As for overseas relations, the only result was the hope (one fears unlikely to be realised) that there would be set up a Royal College of Barristers and Solicitors which would give degrees and fellowships to practising lawyers and help raise the standards and reputation of the profession throughout the Commonwealth.

In Ceylon, litigation is a national pastime: perhaps this was the most startling reason for **congestion in the courts** that came up in the discussion on this subject. The speaker suggested the provision of libraries and sports grounds to keep people otherwise occupied. It was New South Wales that seemed to have the biggest problem, however, for more than two years usually separated the setting down for trial and the hearing of the case. One reason was the habit the insurance companies in that State had of contesting every claim and only settling it, if at all, when the case came on to trial. A possible reason for this was the hope that the plaintiff or his witnesses would by that time be dead or have left the country; the undoubted result was that 75 per cent. of common-law actions there involved motor cars.

Other avoidable causes of congestion were suggested. Some blamed the judges for not co-operating with the profession in fixing a date; some the barristers for talking too much; and some solicitors who took on too much work and did not prepare it properly. These criticisms were all made by lawyers from New South Wales (in a different category, of course, from that criticised), but they all agreed that there the delay was very largely caused by the necessity of a jury in nearly every case. The remedies proposed varied from small procedural improvements to the creation of more judges.

The morning's proceedings on the final day of the conference were taken up with the reports on the various discussions by the chairmen concerned; in the afternoon the conference was formally closed. These proceedings were opened by a resolution of thanks on behalf of the delegates, moved by Mr. R. N. VROLAND of Australia and Col. P. P. HUTCHINSON of Canada. Mr. Vroland's speech was enlivened by an unconventional personal tribute to the Secretary of The Law Society, Mr. T. G. Lund: "He's a great fellow. Look at him there with his smiling face and his bald pate; he is a great man to have in a crisis; he never turns a hair!" He said also that the delegates had been very, very happy here and thanked many organisations for the lavish hospitality they had received. Both speakers hoped that there

would be other conferences in their own countries, in Canada in five years' time and in Australia in ten.

LORD RADCLIFFE, in reply, said that he could find nothing better to say to the delegates than: "Thank you very much; we are so glad to have had you," but what he intended particularly to speak about—and praise—was the Judicial Committee of the Privy Council. There was something rather impressive about that room in Downing Street and something special about appearing before it. It was like other law courts in that it was hard to hear what was going on, and the provision for counsel's comfort was inadequate, but at the period of its widest jurisdiction it had a range greater than any other court in history. It had done much since its reform in 1833 to bring together Commonwealth lawyers, and he wanted to say a word in pious memory of the man responsible for that reform, Lord Brougham. "Solon, Lycurgus, Demosthenes, Lord Chesterfield and a number of other eminent persons," wrote Samuel Rogers after a breakfast with him, "have just gone downstairs and driven away in one post-chaise." He was a practical man. The first thing he did on becoming Chancellor was to free a man who had been in gaol fifteen years for making reflections on Lord Eldon's ancestry. Apologies were not considered sufficient by the latter to purge so heinous a contempt. Brougham smuggled the Bill reforming the Judicial Committee without the House of Lords even being aware of it; and it was for this unobserved feat that he deserves to be remembered to-day.

People talked of the committee as if it set out to harmonise the various laws of the Commonwealth. Such had never been its purpose, nor was it qualified to realise it. It was not even a regular court of appeal for the countries which still used it. What it had done was to bring a general humane approach to the local law; what it might do in the future was to decide questions in dispute between two parts of the Commonwealth and questions deciding the status of great masses of people. It had done this before—for instance, in the disputes between Ontario and Manitoba in 1884 and between Canada and Newfoundland in 1927. If it continued to be recognised as that kind of court, the problem of where it should sit and who should sit on it would solve itself.

After Lord Radcliffe's speech, Sir HARTLEY SHAWCROSS, Chairman of the Bar Council, and Mr. CHARLES NORTON, President of The Law Society, also thanked the guests. Sir Hartley Shawcross also spoke on the Judicial Committee. He thought that its jurisdiction might be extended, that more Commonwealth judges should sit on it and that it should sit in the country from which it was hearing appeals. He hoped that the friendship created by the conference could be renewed in others in the years to come.

The banquet in the evening ended the conference. It had been a success not because of any positive result, not because of any answer reached to the practical problems it had discussed, but because it had enabled lawyers to see what other laws and lawyers were like, and had removed some of the doubts that might have been felt about other systems and some of the complacency that might have been felt about their own.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

COURT OF APPEAL

ADOPTION: CONSENT OF FATHER OF ILLEGITIMATE CHILD NOT NECESSARY

***In re* M., an Infant**

Denning, Birkett and Romer, L.JJ.

6th July, 1955

Appeal from Huddersfield County Court.

The mother of a twelve-year-old illegitimate child and her husband applied to the court for an adoption order in respect of the child. The child's father, a person against whom no affiliation order had been made and who had not entered into any agreement to contribute to the child's maintenance, was made a respondent to the application and refused his consent to the adoption and sought to be heard on the merits of the adoption order. The county court judge refused to make the order. The mother and her husband appealed.

DENNING, L.J., said that the word "parent" in an Act of Parliament did not include the father of an illegitimate child unless the context otherwise required. The law of England recognised no rights in him in regard to the child, whereas the mother had several rights. His lordship did not consider that in the Adoption Act, 1950, the context otherwise required. Everything pointed to the word "parent" being used in its legal sense so as to exclude the natural father. The natural father therefore had no right to object to this adoption, and the county court judge was wrong in thinking that he was a "parent" whose consent was required under s. 2 (4) (*a*) of the Act. The judge plainly would have made an adoption order except for his erroneous belief that the consent of the natural father was necessary. As it was unnecessary, the appeal should be allowed and the adoption order made.

BIRKETT, L.J., concurred. In the present case the father was not a person liable by virtue of an order or agreement to contribute to the child's maintenance, and therefore his consent was not required.

ROMER, L.J., also agreed. In the absence of a definition of "parent" in the Act of 1950, the argument advanced in support of the view that a putative father was a "parent" for the purposes of s. 2 (4) (*a*) of the Act was not without strength. But it was more than neutralised by two considerations. The first was that the consents referred to in s. 2 (4) (*a*) were essentially linked with the transfer of rights which resulted from an adoption order under the provisions of s. 10. But the father of a bastard had never had any rights in respect of it at all, and was not deprived by s. 10, on its adoption, of any rights, for he had no rights on which the section could operate. Nor had the father any rights which would be recognised in the exercise of the equitable jurisdiction over wards of court. Section 10 was concerned with "rights," and such *locus standi* as a man possessed with regard to any natural child of his who became a ward of the Chancery Division fell far short of qualifying as a "right." That was a cogent reason for rejecting the view that his consent to the adoption, as a parent, was required. The second reason was that the father of an illegitimate child was expressly brought, by s. 45, within the definition of "relative," and the only legitimate inference from such inclusion was that his status, for the purposes of the Act, was to be that of a relative of an adoptive child, and nothing more. The father of an illegitimate child was not *per se* a "parent" within s. 2 (4) (*a*), and an order for the adoption of the child could be made without his consent.

Appeal allowed. Leave to appeal refused.

APPEARANCES: *John Wilmers* (*Jaques & Co.*, for *Mary E. Sykes & Co.*, Huddersfield); *F. P. Neill* (*Vizard, Oldham, Crowder & Cash*, for *Whitfield, Son & Hallam*, Dewsbury).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[3 W.L.R. 320**

INDUSTRIAL DISPUTES TRIBUNAL: JURISDICTION: "ISSUE" AND "DISPUTE"

R. *v.* Industrial Disputes Tribunal; *ex parte* Portland Urban District Council

Denning, Birkett and Romer, L.JJ. 7th July, 1955

Appeal from Divisional Court.

After protracted efforts by an employee of a local authority, his trade union, and the relevant provincial (Whitley) council to persuade the local authority that a particular scheme of recognised terms and conditions should apply to the post occupied by the employee, an award of the Industrial Disputes Tribunal in September, 1953, made that scheme, by operation of art. 10 of the Industrial Disputes Order, 1951, an implied term of the contract of employment between the local authority and the employee. The local authority sought to avoid implementing the award by dismissing the employee and re-engaging him to perform the same duties under another designation and under a new contract of employment, to which a different scheme applied. The union thereupon, in February, 1954, reported to the Minister of Labour and National Service that an issue had arisen under art. 2 of the order as to whether the local authority should observe

the scheme in relation to the redesignated post which, they contended, being identical in character with the former post, was one to which the scheme applicable under the award should apply. The Minister referred the matter to the tribunal; but the local authority objected that the tribunal had no jurisdiction to hear it, and obtained from the Divisional Court an order prohibiting the tribunal from proceeding. The court held that at the relevant date there was no "issue" within the meaning of art. 2, as construed by the majority of the Court of Appeal in *R.* v. *Industrial Disputes Tribunal; ex parte Technaloy, Ltd.* [1954] 2 Q.B. 46, between the local authority and their employee or the union, and that if there was any controversy at that date it was one to be decided under the appeals machinery provided by para. 25 (2) of the scheme, as "a question whether or not an employee was 'an officer' to whom the scheme applied, by reference to the relevant provincial (Whitley) council." The trade union appealed.

DENNING, L.J., said that in his view there was clearly a controversy existing at the date when the trade union reported the matter to the Minister. The action taken by the local authority was so provocative that no one could suppose that the trade union would acquiesce in it or remain silent under it. There was clearly an issue between the trade union and the local authority. As to whether the matter reported was within art. 2 of the Industrial Disputes Order, 1951, as "an issue as to whether an employer in the district should observe the recognised terms and conditions," the difficulty was that it had sometimes been assumed that a matter must either be a "dispute" or an "issue," but could not be both. His lordship did not agree with that assumption, but agreed with what Romer, L.J., had said in *R.* v. *Industrial Disputes Tribunal; ex parte Technaloy, Ltd.* [1954] 2 Q.B. 46, 61, 64, namely, that there might be a very considerable overlap between the two. When a matter could properly be described as either a "dispute" or an "issue," the choice lay with the persons who reported it to the Minister. The jurisdiction of the tribunal should not depend on any nice distinction between the two. The union was in the present case entitled to refer this matter as an "issue" to the Minister, and the Minister acted quite correctly in referring it to the tribunal. As to whether the difference ought first to have been referred by the trade union to the relevant Whitley council under para. 25 (2) of the scheme, the local authority repudiated the scheme altogether as applicable to the employee, and could not be heard to say that he was bound by it when they said that they were not bound by it themselves. Paragraph 25 (2) was only machinery for settling a difference, and the existence of such machinery was no bar to a report to the Minister. It was often of the greatest possible importance that an issue should be reported to the Minister at once; and it would be unfortunate if that could not be done until all trade machinery for settlement had been exhausted. The order did not so require and the courts ought not to require it either. His lordship could see no reason for issuing a writ of prohibition. The tribunal had jurisdiction to determine the issue referred to them. The appeal should be allowed.

BIRKETT and ROMER, L.JJ., delivered concurring judgments.

Appeal allowed.

APPEARANCES: *Gerald Gardiner*, Q.C., and *Rodger Winn* (*Timothy Hales*); *R. I. Threlfall* (*Sharpe, Pritchard & Co.*); *S. B. R. Cooke* (*Solicitor, Ministry of Labour and National Service*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[1 W.L.R. 949**

HUSBAND AND WIFE: SEPARATION AGREEMENT FOR NO MAINTENANCE: WIFE RECEIVING NATIONAL ASSISTANCE: HUSBAND'S LIABILITY

National Assistance Board *v.* Parkes

Denning, Birkett and Romer, L.JJ. 8th July, 1955

Appeal from Divisional Court ([1955] 1 Q.B. 486; *ante*, p. 221).

For the purposes of the National Assistance Act, 1948, "a man shall be liable to maintain his wife"; and by the combined effect of ss. 42 and 43 of that Act the National Assistance Board may bring before justices any husband whose marriage is still subsisting, and may seek to recover from him contributions in respect of assistance given to his wife as a person assisted under the Act; but once he is before the court, the court "shall have regard to all the circumstances." A husband and wife parted by consent under a separation agreement, by which the wife covenanted that she would not at any future time be or claim to be entitled to any financial provision whatsoever from the husband. Later the wife became destitute and received assistance from the National Assistance Board, which preferred a complaint under s. 43 of the Act against the husband, as a person liable to maintain the person assisted. The justices dismissed the complaint and the Divisional Court allowed the appeal of the Board. The husband appealed.

DENNING, L.J., said that under s. 43 (2) the court must have regard, among other things, to any circumstances recognised by the law as sufficient to relieve a husband of his obligation to maintain his wife. From the earliest times, both in the ecclesiastical and in the common-law courts, a husband had been under no liability to maintain his wife if she had been guilty of adultery or desertion, and the courts had held that his statutory duty under various Acts was subject to the same exception. Likewise, it had been held in *National Assistance Board* v. *Wilkinson* [1952] 2 Q.B. 648 that a husband had an answer in law to any summons by the Board if his wife had been guilty of adultery or desertion. That decision was right, on the ground that her guilt was one of the "circumstances" of the case to which the magistrates must have regard. It was so strong a circumstance that it afforded an answer in law to the claim. It was said in the present case for the husband that another circumstance, which gave the husband an answer to the wife's claim and therefore to the Board's claim, was the presence of a separation agreement by which the wife had said that she would ask for no maintenance. The truth was that, on a separation by consent, the existence of an agreement for fixed or no maintenance did not oust the husband's duty to maintain his wife. In most cases, the husband, by fulfilling his agreement, fulfilled his duty. But if circumstances changed and the wife was in need, and the husband knew of it and could pay for her, the private agreement must give place to the overriding duty of a man to maintain his wife, which only ceased when she had been guilty of a grave matrimonial fault. When the husband here knew of his wife's need, which was such that she had had to resort to public assistance, it became his duty to maintain her, despite the deed. The Board could in those circumstances claim a contribution from him towards the amount they had paid. The appeal should be dismissed.

BIRKETT, L.J., concurring, said that where public money was expended in this way, a private bargain could not overrule the right and power in the statute to recover public money from certain persons in appropriate circumstances.

ROMER, L.J., also agreed; but he added that while the result in *National Assistance Board* v. *Wilkinson* was right, he could not accept what he believed to be the ground on which that decision was founded. The conclusion of the Divisional Court appeared to have been reached by excluding from the category of persons in s. 42 (1) of the Act of 1948 a husband whose wife had committed a matrimonial offence. In his lordship's view the clear effect of ss. 42 and 43 of the Act read together was that the guardians could bring before the justices a married man whose marriage was still subsisting; but when he came before the court, the circumstances referred to in s. 43 (2) came into play, and a highly relevant, and, it might be, a conclusive circumstance which would prevent the magistrates from making an order against him under s. 43 would be the fact, established by him, that his wife had committed a matrimonial offence.

APPEARANCES: *R. I. Threlfall* (*Gibson & Weldon*, for *Archer and Wilcock*, Nairobi, Kenya Colony); *Rodger Winn* (*Solicitor, National Assistance Board*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[3 W.L.R. 347**

ILLEGAL BUILDING CONTRACT: PROMISE BY ARCHITECT TO OBTAIN LICENCES: BUILDERS ENTITLED TO DAMAGES FOR BREACH OF WARRANTY

Strongman (1945), Ltd. *v.* Sincock

Denning, Birkett and Romer, L.JJ. 12th July, 1955

Appeal from official referee.

An architect owner contracted with builders to supply materials and carry out work at his premises, and promised orally that he would obtain all the licences necessary at that date under reg. 56c of the Defence (General) Regulations, 1939. Work considerably in excess of the licences granted was carried out. The builders brought an action, claiming the balance of the price over the licensed amount, or, alternatively, damages of a similar amount for breach of the warranty to obtain the licences. The official referee gave judgment for the builders for damages for breach of warranty, and the architect appealed.

DENNING, L.J., said that the architect had no merits at all. But if his defence was good in law, effect must be given to it. The builders could not sue on the contract because it had been held in many decisions that a builder doing work without a licence could not recover under the contract. As to whether there was a promise by the architect that he would get supplementary licences or if he failed to get them he would stop the work, the finding of the official referee that there was such a promise or warranty was decisive. The assurance given by the architect amounted to a collateral contract. The next question was whether the builders could recover in law on that collateral promise. On the authorities cited to the court, the law was that though a man might have been guilty of an offence which was absolutely prohibited by statute so that he was answerable in a criminal court, nevertheless, if he had been led to commit that offence by the representation or the promise of another, he could recover damages for fraud, if there was fraud, or for breach of promise or warranty if he proved such to have been given, provided always that he himself had not been guilty of culpable negligence disabling him from that remedy. As to whether the builders were guilty of negligence disentitling them from recovering damages, he (his lordship) had said in other building cases that when a builder was doing work for a lay owner the primary obligation was on the builder to see that there was a licence, and if he did not do so it was his own fault if he found himself landed in an illegality. But in the present case there was not a lay owner. The owner was the architect, and he himself had said in evidence that where there was an architect, it was the universal practice for the architect and not the builder to get the licence. No fault in these circumstances could be attributed to the builder. On the findings of the official referee the builders were entirely innocent people who were led into this unfortunate illegality by the representation of the architect, amounting to a collateral contract. There could be no objection in law to the builders recovering the damages; and the appeal should be dismissed.

BIRKETT, L.J., delivered a concurring judgment.

ROMER, L.J., also concurred. A man could give a warranty even though he could not carry it into effect, and the builders were not precluded from relying on that warranty by reason of the fact that the architect could not obtain licences as of right. Appeal dismissed.

APPEARANCES: *Dingle Foot*, Q.C., and *T. O. Kellock* (*Robbins, Olivey & Lake*, for *Nalder & Son*, Truro); *Basil Wingate-Saul* (*Ratcliffe, Son and Henderson*, Falmouth).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[3 W.L.R. 360**

CHANCERY DIVISION

SETTLED LAND: TRUSTEE FOR SALE: REPAIRS PAID FOR OUT OF INCOME: CLAIM FOR RECOUPMENT OUT OF CAPITAL

***In re* Wynn; Public Trustee *v.* Newborough (No. 2)**

Harman, J. 1st July, 1955

Adjourned summons.

A testator, who died in 1932, devised all his landed property on trust for sale with certain consents and with a power to postpone. The income from that property was to be held on trust (after payment of certain costs, charges and expenses) to divide the net income into two equal parts and pay half to each of two of the testator's nephews during their joint lives with cross-remainders between them and with limitations over (as to any part of the property which remained unsold and as to the capital moneys representing the proceeds of sale) after the death of the survivor. The testator further gave directions as to what charges were to come out of the income of the general estate. These included all costs of (*inter alia*) repairs and similar outgoings. Between 1946 and 1952 the Public Trustee (who was one of the trustees of the will) expended considerable sums out of income on repairs to agricultural properties forming part of the estate. The tenants for life desired to be repaid out of capital in respect of these expenses, and a summons was taken out by the Public Trustee to ascertain his powers in this respect, having regard to the material statutory provisions and the decision in *In re Duke of Northumberland* [1951] Ch. 202.

HARMAN, J., said that it was contended for the tenants for life that, having regard to s. 73 (1) of the Settled Land Act, 1925, and ss. 81 (1) and 96 of and Sched. III, Pt. II, para. 23, to the Agricultural Holdings Act, 1948, repairs ought to have been defrayed out of capital; that past expenditure out of income should now be adjusted as between income and capital, and that in the future all repairs must be done out of capital. The alternative view was that the Public Trustee had a discretion, but that once he had made a determination the book was closed. This was a trust for sale, so it was the trustee and not the tenant for life who was in the saddle; it had been pointed out in *In re Conquest* [1929] 2 Ch. 353 that trustees for sale had, by reason of s. 28 of the Law of Property Act, 1925, two sets of powers: first, the management of the trust conferred by s. 102 of the Settled Land Act; and, secondly, the powers regarding improvements under s. 84. They also had any powers which might be given by the will. If the will required that repairs should be defrayed out of income, the Act conferred the power of doing so out of capital if the repair was an improvement to which, under the Act, capital could be applied. It had been contended that s. 81 of the Act of 1948 made it obligatory to spend capital on such things as farming improvements; but the true effect of the section was to prevent the recoupment out of income of capital spent on such matters; in the present case no capital money had been applied, and the section did not come into operation. In *In re Duke of Northumberland* [1951] Ch. 202 a tenant for life, who had spent money on repairs, had been held entitled to be recouped by the trustees out of capital. But there was an essential difference between a trust for sale and a strict settlement, in that it was the trustee and not the tenant for life who had spent the money in the exercise of his powers in accordance with the terms of the will. After that no question could arise of undoing what had been done, though the Public Trustee had a discretion as to the future. Declaration accordingly.

APPEARANCES: *J. A. Wolfe; Lionel Edwards*, Q.C., and *W. A. Bagnall; R. W. Jennings*, Q.C., and *B. S. Tatham; M. J. Albery*, Q.C., and *P. Baker* (*Whitfield, Byrne & Dean*, for *Carter, Vincent & Co.*, Caernarvon; *Lewis & Lewis and Gisborne and Co.; Patersons, Snow & Co.*, for *Longueville & Co.*, Oswestry).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 940**

CHARITY: TRUSTS FOR ADVANCEMENT OF SINGING AND ORGAN MUSIC: VALIDITY

***In re* Levien; Lloyds Bank *v.* Worshipful Company of Musicians**

Danckwerts, J. 13th July, 1955

Adjourned summons.

A testator directed that a sum should be set aside out of his residuary estate to form a trust fund to be transferred to the Worshipful Company of Musicians, the annual income of which was to be devoted to the making of presentations (other than money or medals), through a committee, to distinguished members of either one or any of the following professions, namely, (*a*) singers, (*b*) composers of vocal music, (*c*) writers on the subject of singing, and (*d*) researchers into matters relating to the human voice; and that the committee, in awarding the presentations, should always bear in mind as part of their standard of excellence "Santley's views and doctrine upon singing and voice production as exemplified in my two monographs, 'Sir Charles Santley' and 'Some notes for singers'." The testator further directed that his trustees, after providing for the above fund, should transfer the residue of the capital and income of the residuary trust fund to the company for the establishment of a trust fund to be applied for the benefit of professional or amateur musicians whose work or study might be devoted wholly or partly to the music of the organ. The trustees took out a summons to ascertain whether these gifts constituted valid charitable trusts.

DANCKWERTS, J., said that he had derived great assistance from *Royal Choral Society* v. *Inland Revenue Commissioners* [1943] 2 All E.R. 101, which had raised the question whether a society which was formed for the advancement of choral singing in London was "established for charitable purposes only." In that case it was argued that the society's purpose was educational; against that the Crown contended that nothing could be educational which did not involve teaching, in the sense of a master teaching a class. Lord Greene, M.R., repelled that argument, and vehemently dissented from a view expressed in Tudor on Charities that the fine arts were not to be regarded as objects of charity; he said that a body of persons established for the purpose of raising the artistic taste of the country was

established for educational purposes, because the education of the artistes' taste was one of the most important things in the development of a civilised being. In the present case, the trusts must be read as a whole. The first trust, when so read, was to effect the training of singers for serious music for æsthetic purposes; it was not intended to benefit individuals but to benefit the public by producing better singers and voice production, and it seemed to fall exactly within Lord Greene's words. The second trust was even more clearly educational; what the testator sought was to produce better organists and better organ music; that was for the benefit of the public, and was educational or within the fourth class in *Pemsel's* case [1891] A.C. 531. The trusts were, therefore, charitable and valid. Declaration accordingly.

APPEARANCES: *J. A. Armstrong* (*Palmer, Bull & Mant*); *N. S. S. Warren* (*Waterhouse & Co.*); *T. Barnes* (*Wegg-Prosser & Co.*); *B. Clauson* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 964

CHARITIES: SINGLE BODY OF TRUSTEES: APPLICATION TO AMALGAMATE TRUST FUNDS AND ENLARGE SCOPE OF INVESTMENTS

***In re* Royal Society's Charitable Trusts**

Vaisey, J. 18th July, 1955

Adjourned summons.

The Royal Society, as trustee of a number of charitable trusts possessing their own special trust funds, applied to the court for permission (*a*) to conflate and combine the trust funds in question into one combined fund or pool, in which the several trusts were to be deemed to be interested in appropriate aliquot shares; (*b*) to enlarge the scope of permissible investments for and in regard to such combined fund. A summons was taken out to ascertain whether the court had jurisdiction to make the order sought.

VAISEY, J., said that the proposed consolidation of the separate trust funds would be advantageous. It would simplify the administration of the trusts and spread over a larger area the risk of depreciation and the advantage of appreciation. The extension of the permissible range of investment was recognised as a method of correcting the ill-effects of inflation, and, if judiciously pursued, possessed obvious advantages. The question of the court's jurisdiction to authorise such steps fell neither within the scope of s. 57 of the Trustee Act, 1925, nor within that of the rather ill-defined scope of the court's general jurisdiction. Mr. Buckley had pointed out that the Attorney-General, whom he represented, stood for the totality of all the beneficial interests under all these trusts, and had referred to *A.-G.* v. *Sherborne School* (1854), 18 Beav. 256; *A.-G.* v. *Bishop of Worcester* (1851), 9 Hare 328; and *Andrews* v. *M'Guffog* (1886), 11 App. Cas. 313. The conclusion was that the court had, at the instance of the trustees, jurisdiction, where the Attorney-General consented or did not oppose, to authorise such proposals as the present, but *by way of scheme*. It would seem that neither the court nor the Attorney-General could act in such a matter without the concurrence of the other. This was an exceptional case, and there was evidence that the Royal Society took special care in selecting and varying its investments. The range of investments ought not to be widened as of course whenever trustees of a charity wanted more income, nor should the existence of a multiplicity of trusts administered by one trustee be regarded in every case as justifying a pooling of investments. The jurisdiction should be exercised sparingly, and not indiscriminately. In the present case, authorisation would be given to a scheme providing as follows: (1) The capital funds of the several charities would be consolidated into one pool. (2) Each charity would be regarded as interested in an individual aliquot portion of the pool. (3) For adjusting and regulating the aliquot portions the necessary valuations and calculations should be made from time to time. (4) Subject to the later provisos the Society might invest in the following range of securities not authorised by law: (i) United States federal or state securities; (ii) marketable securities of all kinds of any company incorporated in the U.K. or U.S., provided: (*a*) such securities must be quoted on a recognised stock exchange in the U.K. or on the New York Stock Exchange; (*b*) the securities in the authorised "trustee" range must never be less than one-third of the value of the pool; (*c*) all securities must be fully paid, except those of U.K. banks or insurance companies; and (*d*) companies in which investments were made must have a paid-up capital of at least £750,000. Order accordingly.

APPEARANCES: *J. Brunyate* (*Bristows, Cooke & Carpmael*); *D. Buckley* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 342

QUEEN'S BENCH DIVISION

PURCHASE FROM BUILDER OF BUNGALOW IN COURSE OF ERECTION: DEFECTS DUE TO POPLAR ROOTS

Jennings *v.* Tavener

Jones, J. 11th May, 1955

Action.

By a contract made in February, 1950, the plaintiff's husband agreed to buy from the defendant, a builder, a bungalow "in the course of erection or to be erected," and entered into occupation shortly after the completion date. Cracks appeared in the structure which it was agreed were caused by the settlement of the walls owing to the withdrawal of moisture from the subsoil by the roots of poplar trees growing near the bungalow. In 1953, her husband having died, the plaintiff, as administratrix of his estate, sued the defendant for breach of contract.

JONES, J., said that the plaintiff relied on an implied warranty that the house would be built in a workmanlike manner. The defendant agreed that a warranty of fitness was to be implied on the sale of a half-built house, but that it was limited to the completion of the building in a workmanlike manner, which, it was said, had been done. He relied also on condition 12 (3) of the National Conditions of Sale (15th ed.), which provided that the purchaser should "be deemed to buy with full notice in all respects of the actual state and condition of the property sold" and should take the property as it was. It was not clear whether the defendant knew that poplar trees were likely to cause danger; but he ought to have known, as much literature had been published on the subject. Condition 12 (3) did not apply to a house under construction, and was also inconsistent with one of the special conditions of the contract. It was necessary to ascertain what was the nature and extent of the warranty on the sale of a house in course of construction. The cases of *Miller* v. *Cannon Hill Estates, Ltd.* [1931] 2 K.B. 113 and *Perry* v. *Sharon Development Co., Ltd.* [1937] 4 All E.R. 390 showed that in such a contract there was a warranty that the house, when completed, would be fit for human habitation. In the present case the house was not so fit when handed over on completion, because the defendant had failed to take the necessary steps to prevent a settlement, so that there had been a breach of warranty. Judgment for the plaintiff.

APPEARANCES: *C. P. Harvey*, Q.C., and *M. R. Hickman* (*Chandler & Creeke*); *H. J. Phillimore*, Q.C., and *H. E. Francis* (*J. H. Fellowes*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 932

PROBATE, DIVORCE AND ADMIRALTY DIVISION

MARRIAGE SETTLEMENT: VARIATION: POSITION OF ADOPTED CHILD: INTERESTS OF CHILDREN

Best *v.* Best

Karminski, J. 1st July, 1955

Application to vary registrar's report as to variation of a settlement.

By an ante-nuptial settlement made on 18th January, 1935, the husband brought into settlement investments worth approximately £4,000 at the date of the hearing and a policy of assurance on his life for the sum of £5,000 payable in December, 1970, or on his previous death. The husband paid the annual premium on this policy. By the settlement the income from the whole of the settlement was payable to the wife during her life and after her death to the husband for his life. After the death of both the wife and the husband the trustees were to stand possessed of the trust fund in trust for the issue of the marriage, whether children or remoter issue. The husband and wife were married on 19th January, 1935. In June, 1945, the husband and wife adopted a male child, Timothy, born in December, 1944. A child of the parties, Anthony, was born in October, 1947. In December, 1954, a decree dissolving the marriage on the ground of the husband's adultery was made absolute. The

wife applied to the court to vary the settlement by extinguishing all the rights, powers and interests of the husband therein as from the date of the decree absolute. On 22nd March, 1955, Mr. Registrar Kinsey reported on the wife's application and submitted, *inter alia*, that the wife's application be dismissed. The wife gave notice to vary the registrar's report by (1) extinguishing the interests of the husband under the settlement as though he were dead; alternatively (2) accelerating the interests of the child Anthony under the settlement and postponing the interests of the husband thereunder; and/or alternatively (3) providing that the adopted child Timothy should benefit under the settlement as though he were issue of the parties. Prior to the hearing of the application to vary the settlement the parties agreed to an order for the wife's maintenance and for the two children at the rate of £2,000 per annum less tax for the wife during joint lives, for Anthony at the rate of £250 per annum less tax, and for Timothy at the rate of £500 per annum less tax. The difference in the payments to the children was due solely to the fact that Timothy was at a boarding school while Anthony was still at home.

KARMINSKI, J., reading his judgment, said that since in the circumstances proper provision for the wife and child of the marriage had been made under the terms of the settlement no further provision was necessary for them and there was no need to accelerate the child's interest. There remained the third and most difficult part of the application, namely, that for providing that Timothy should benefit under the settlement as though he was issue of the body of the husband and wife. Anthony and Timothy had been brought up to regard each other as brothers in every sense, and had been treated with complete equality by the parties and with equal affection. His lordship referred to s. 13 (2) and s. 10 (2) of the Adoption Act, 1950, and said that the general tenor of the Act was to put adopted children as nearly as possible in the position of children of the marriage, especially where the adopters were husband and wife. But it remained clear that the Act did not bring into a will or settlement a child adopted after the execution of such will or settlement. It had been contended that the powers of the court created by s. 25 of the Matrimonial Causes Act, 1950, should be used to vary the settlement so as to bring a benefit to Timothy, and emphasis had been laid on the need to preserve at least a feeling of equality between the two boys. By that section the court was empowered to make such order as it thought fit; but the use of so wide a power must be made in the exercise of judicial discretion. Reliance had also been placed on certain observations, in *Garforth-Bles* v. *Garforth-Bles* [1951] P. 218, in which Pearce, J., emphasised the importance of the personal relationship between father and child; but it was important to note that he emphasised also the material benefits which the child would receive under the variation which was made. In none of the authorities to which he (his lordship) had been referred had the power to appoint to a future spouse or to the children of a subsequent marriage been given on sentimental or personal grounds alone; the variations had been accompanied by a substantial monetary benefit to the child or children of the marriage. The desire of the wife to put the two boys on an equality in respect of financial matters was understandable, since to do so would at least remove any feeling of future inequality between them. But while importance must be attached to that argument, such equality should not in the circumstances be obtained at the price of so large a financial sacrifice on the part of Anthony, and it might be possible for the husband to make some other provision for Timothy. Application dismissed.

APPEARANCES: *P. Malcolm Wright*, Q.C. (*Baileys, Shaw and Gillett*); *Dennis Lloyd* (*Pontifex, Pitt & Co.*); *Roger Ormrod* (for Anthony) and *James Comyn* (for Timothy) (*Official Solicitor*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[3 W.L.R. 334**

COURT OF CRIMINAL APPEAL

TWO ACCUSED: NO EVIDENCE AGAINST ONE ACCUSED AT CLOSE OF PROSECUTION: DUTY OF JUDGE TO ACCEPT SUBMISSION OF NO CASE

R. *v.* Abbott

Lord Goddard, C.J., Finnemore and Devlin, JJ.

12th July, 1955

Appeal against conviction.

The appellant and another were indicted together for forgery. At the close of the case for the prosecution a submission was made on behalf of the appellant that there was no evidence against him fit to go to the jury. The trial judge rejected the submission and refused to withdraw the case from the jury. Evidence was then given by the other accused incriminating the appellant. In his summing-up the judge expressed the view that the foundation on which the prosecution opened its case against the appellant had crumbled completely. The appellant and his co-defendant were convicted.

LORD GODDARD, C.J., said that the court agreed with the judge below that there was no evidence against the appellant at the close of the case for the prosecution. That being so, it was wrong to allow the case against him to go to the jury, and *R.* v. *Power* [1919] 1 K.B. 572 was no authority to the contrary. It might have been that the judge acted as he did to prevent the jury from acquitting both prisoners because they could not be satisfied which, if either, was guilty. But that was no proper reason for so acting. If there was no evidence against the appellant he was entitled to be acquitted and leave the dock; the jury would then have to decide whether the other prisoner committed the offence. Further, it could not be right for a judge to leave a case to the jury, when the whole structure on which the prosecution had been built up had collapsed. It was putting the onus on him to make him go into the witness box after that. The conviction should be quashed. Appeal allowed.

APPEARANCES: *A. P. Marshall*, Q.C., and *F. G. Paterson* (*A. Bieber & Bieber*); *Sir G. Russell Vick*, Q.C., *C. T. B. Leigh* and *M. Scholfield* (*Cyril C. Harrison*, Manchester).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 369**

RECEIVING: PROPER DIRECTIONS TO JURY IN SUMMING-UP

R. *v.* Hepworth and Fearnley

Lord Goddard, C.J., Finnemore and Devlin, JJ.

18th July, 1955

Appeal against conviction.

The appellants were charged at Bradford City Sessions with receiving eight bales of wool knowing them to have been stolen. They were convicted and sentenced to two years and eighteen months' imprisonment respectively. They appealed on the ground that the recorder in his summing-up failed to direct the jury adequately as to the burden of proof, or the way in which the jury should regard the appellants' explanations of their possession of the stolen goods.

LORD GODDARD, C.J., said that it was always desirable that a jury should be told that the burden of proof was on the prosecution, and it was desirable that emphasis should be laid on that in a receiving case, when the jury should also be told that if the prisoner gave an explanation of the possession, though they might not be convinced that it was true, if they thought that it might be true that would mean that the prosecution had not proved the case, because some degree of doubt remained. As was said in *R.* v. *Kritz* [1950] 1 K.B. 82, it was not the particular formula of words that mattered; if the jury were made to understand that they must not return a verdict against the defendant unless they felt sure, and that the onus was always on the prosecution and not on the defence, that was enough. The court did not desire to lay down any particular form of words, but in the present case the recorder had used the word "satisfied" only, and it was desirable that something more than that should be said. The conviction should be quashed. Appeal allowed.

APPEARANCES: *R. Lyons*, Q.C., and *E. Lyons* (*Sidney Torrance and Co.*, for *Jack Levi*, Leeds); *J. S. Snowden* (*W. H. Leathem*, Bradford).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 331**

The SOLICITORS' ARTICLED CLERKS' SOCIETY announce the following programme: Tuesday, 9th August—A visit to Ford Motor Works; meet at Green Line terminus, Aldgate (bus queue 723 (A/B), at 1 p.m. Tuesday, 16th August—Theatre Party to Regents Park to see either "The Romantics" or a Shakespearean play; please 'phone Miss Ann Churchill, ACOrn 0183. Tuesday, 23rd August—Swimming at the Blue Pool, Dolphin Square, S.W.1; meet Patrick Wright outside at 6 p.m.; charge 3s.

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 27th July :—

Aberdeen Corporation Order Confirmation.
Appropriation (No. 2)
Bournemouth Corporation (Trolley Vehicles) Order Confirmation.
Bristol Corporation.
Cardiff Corporation.
Chatham and District Traction.
Cheshunt Urban District Council.
Corn Exchange.
County Courts
Dewsbury Moor Crematorium.
Doncaster Corporation (Trolley Vehicles) Order Confirmation.
European Coal and Steel Community
German Potash Syndicate Loan.
International Finance Corporation
Kent Water.
Liverpool Corporation.
London County Council (Money).
Maidstone Corporation.
Milford Docks.
Ministry of Housing and Local Government Provisional Order Confirmation (Colne Valley Sewerage Board).
Miscellaneous Financial Provisions
North Wales Hydro-Electric Power.
Nuneaton Corporation.
Rating and Valuation (Miscellaneous Provisions)
Salford Corporation.
Sandown—Shanklin Urban District Council.
Stock Exchange Clerk's Pension Fund.
Stromness Harbour (Guarantee) Order Confirmation.
Taf Fechan Water Supply.
Validation of Elections
Wireless Telegraphy (Blind Persons)

HOUSE OF LORDS

Progress of Bills

Read First Time :—

Aliens' Employment Bill [H.C.]	[26th July.
British Transport Commission Bill [H.C.]	[27th July.
Hillingdon Estate Bill [H.L.]	[26th July.
Willoughby de Broke Estate Bill [H.L.]	[26th July.

Read Second Time :—

Leeward Islands Bill [H.L.]	[26th July.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Clean Air Bill [H.C.] [26th July.

To make provision for abating the pollution of the air.

Local Government Elections Bill [H.C.] [25th July.

To provide for the simultaneous holding of elections of rural district councillors and parish councillors ; to require the expenses incurred in relation to the holding of elections of parish councillors to be paid by the council of the rural district within which the parish is situate ; to provide for excluding certain days in computing the period of time within which elections to fill casual vacancies occurring in the offices of county, borough and district councillor and elective auditor are required to be held ; and for purposes connected with the matters aforesaid.

Read Second Time :—

Sudan (Special Payments) Bill [H.C.]	[25th July.
Validation of Elections (No. 2) Bill [H.C.]	[27th July.

To validate the election to the House of Commons of Christopher John Holland-Martin, Esquire, notwithstanding his holding the office of local Director of the Bank of New Zealand, and to indemnify him from any penal consequences which he may have incurred by sitting and voting as a member of that House.

Read Third Time :—

Friendly Societies Bill [H.C.] [27th July.

B. Questions

Insurance Companies (Death Certificates)

Asked whether she was aware of the growing practice of some insurance companies of insuring, without requiring medical evidence, the lives of old-age pensioners who at the time were suffering from diseases which invalidated the claim, and if she would relieve medical practitioners from the duty of supplying insurance companies with certificates of the cause of death, Miss Hornsby-Smith said that the doctor had to notify the registrar of deaths and inform the near relatives or a person present at the death that he had done so in the prescribed form of death certificate. Any obligation he might have to supply a certificate to an insurance company was a matter for arrangement between the doctor and the company and not a statutory obligation. [25th July.

Murder Cases (Documents and Information)

Asked whether he would ensure that in all murder cases conducted by his department, all documents relevant to the case would be made available to the defence without reference to whether they were admissible or not, the Attorney-General said that the prosecution already made available to the defence copies of all relevant documents ; the names and addresses of persons who could give material evidence but whom the prosecution did not propose to call as witnesses ; copies of all relevant statements made to the police by persons since deceased which were not admissible as dying declarations ; and the names and addresses of persons other than police officers to whom such statements had been made. [25th July.

Members of Parliament (Legal Fees)

Mr. Wigg asked for a statement of (1) the number of briefs allocated to the Attorney-General by his predecessors up to the date of his taking office and the amount of fees received by him in respect of such briefs ; and also the same information in respect of members who at present held Ministerial appointments ; and (2) the names of members who had received legal fees in respect of briefs allocated by him and his predecessors during such period as the information was readily available, and if he would state the fees paid in respect of such briefs.

The Attorney-General refused. He said that he and his predecessors had nominated Members of Parliament to conduct cases on behalf of the Crown, and fees had been paid to those members by the Government departments instructing them. He did not think it desirable to publish the names of those nominated. In deciding whom to nominate he had regard only to the nature of the case and skill and experience of counsel. Fees were neither fixed nor paid by him and no record was kept of them by his department. [25th July.

Town and Country Planning Act (Part VI Claims)

Mr. Deedes said that in the period 24th June to 21st July the Central Land Board had made a further 957 payments under Pt. VI amounting to £1,003,834 in respect of private sales. [26th July.

Common Land Law (Royal Commission)

The Prime Minister announced that a Royal Commission would be appointed to undertake a comprehensive review of the present law relating to common land in England and Wales. Details as to chairman, members and terms of reference would be announced later. [26th July.

Westminster Hall (Commonwealth and Empire Law Conference)

Mr. Bevins said it had cost £300 to prepare and clear Westminster Hall for the Commonwealth and Empire Law Conference. The opening session had lasted an hour and had been attended by about 1,200 people. [26th July.

Life Insurance Policies (Medical Examination)

Mr. R. A. Butler refused to prohibit insurance companies from insuring old-age pensioners without medical evidence. There was nothing new in insuring without medical examination. The Industrial Assurance and Friendly Societies Act, 1948, provided that a company or society could not repudiate liability

on health grounds in the case of a policy issued after 30th June, 1948, unless the proposer had made an untrue statement or withheld information on some health matter within his knowledge. [26th July.

Legal Aid Cases (Settlement of Costs)

Mr. Marlowe asked the average delay in legal aid cases between the end of the litigation and settlement of the costs by The Law Society; how much of the period of delay was attributable to taxation of costs; what delay took place after completion of taxation; and whether the Attorney-General would require a special report to be made in all cases which had not been disposed of at the expiry of six months after the litigation.

The Attorney-General said that no information was available of the average time taken by barristers in submitting their fee notes to the solicitors or of the time taken by those solicitors in submitting their bills for taxation and thereafter in sending the allocaturs to The Law Society. He therefore could not give an average figure for the overall delay in those cases.

The average time taken by The Law Society's area committees and Accounts Department to clear the allocaturs and pay the costs and fees was three weeks. As to the last part of the question, the point should be referred to The Law Society, which was the proper body to conduct any inquiry into the administration of the Legal Aid Scheme. [26th July.

Supreme Court Taxing Office (Delays)

The Attorney-General said that delays in taxing bills of costs in the Supreme Court Taxing Office had been very substantially reduced during the last year. In the masters' cases the average delay was now about two months, and in the principal clerks' cases it was about 2½ weeks. The Lord Chancellor was satisfied that in the masters' cases the interval could be further reduced without making any additional appointment, and that the interval in the principal clerks' cases was reasonable and convenient. [26th July.

Trust Funds (Investments)

Mr. H. Brooke made the following statement regarding proposals for amending the Trustee List:—

"The Government have given careful consideration to the suggestion of the Committee on the Law and Practice relating to Charitable Trusts (the Nathan Committee) that the range of investment authorised for trustees of all kinds should be extended. In particular, the committee suggested that the range should comprise (subject to certain safeguards) the debentures and stocks and shares (including equity stock and shares) of financial, industrial and commercial companies quoted on the London Stock Exchange. The committee also suggested that trustees should be permitted to invest in authorised securities standing at a premium.

In the opinion of the Government the proposal for a general extension of the range of investment to include equity stocks and shares is open to serious objection. The very considerations which in some circumstances would lead to the enhancement of the trust funds might in other circumstances lead to considerable losses and the Government have to recognise the possibility that the inclusion within the Trustee List of securities hitherto excluded might be regarded by the general public as conveying a measure of official guarantee of their suitability for investment.

The object of the Trustee List is to ensure the safety of the trust funds in cases where, for example, the settlor has not thought fit to give a wider power of investment. Its purpose is not to offer wider opportunities to trustees to exercise the skill in investment which the management of investment in equity securities continually requires. The List also affords a protection for trustees who have to balance the interests of tenants for life against those of remaindermen.

Furthermore, trustees of existing trusts can already obtain extended powers of investment either by agreement with the beneficiaries (in certain cases) or by leave of the High Court. The Government's conclusion is that any general extension of the powers of investment of trustees would not be desirable.

As is outlined in a Command Paper on "Government Policy on Charitable Trusts in England and Wales"—which is being published to-day—the Government have it in mind to take powers to simplify the procedure by which trustees of charitable trusts can obtain wider powers of investment (on application to the Ministry of Education and the Charity Commissioners). They have given careful thought to the feasibility of introducing some similar new procedure in the case of non-charitable trusts but have reluctantly reached the conclusion that this would be impracticable. In the case of non-charitable trusts there are commonly divergent interests, the pattern of which is very varied, and considerations of a nature with which only the courts can properly deal often arise. Such difficulties are generally not involved in the case of charitable trusts, which are virtually all perpetuities.

On the other hand, there are some minor amendments to the Trustee List which the Government propose to make. First—as the Nathan Committee suggested—the removal of the anomalous restrictions on investment in certain stocks standing at a premium. Secondly—and this is at present the subject of discussion with the representatives of local authorities—the removal of some anomalies regarding local authority stocks and mortgages. Thirdly—the inclusion of sterling securities of the International Bank for Reconstruction and Development. The Government propose at a convenient opportunity to introduce legislation to carry these proposals into effect." [27th July.

Abortion Law

Asked whether, following a recent case at Hampshire Assizes, when a doctor described by the jury as being of high character and good record had been sentenced to eighteen months' imprisonment on a charge of using an instrument with intent to procure a miscarriage, he would introduce legislation to clarify the law on this matter, Sir Hugh Lucas-Tooth said such reports as had been seen did not suggest that this case indicated any need for an amendment of the law. [28th July.

Court-Martial (Dusseldorf) Cost

Mr. Head said that the cost to public funds of this recent court-martial and of the preliminary investigations had been £2,300. [28th July.

Members of Parliament (Crown Cases)

The Attorney-General refused to state the number of Members of Parliament nominated by him to conduct cases on behalf of the Crown and the number of cases involved. [28th July.

Murder Cases (Defence Statements)

The Attorney-General said that so far as was known it had always been the practice in murder cases to make available to the defence copies of relevant statements made to the police by persons since deceased which were not admissible as dying declarations. [28th July.

Town and Country Planning Act, 1954 (Claims)

Mr. Deedes said that on 23rd July outstanding claims for payment of compensation under Pt. II of the Town and Country Planning Act, 1954, numbered 1,250, and under Pt. V 7,000. [28th July.

STATUTORY INSTRUMENTS

Act of Sederunt (Prescribed Officers under the Representation of the People Act, 1949), 1955. (S.I. 1955 No. 1090 (S.110).)

Agriculture Act (Part I) Extension of Period Order, 1955. (S.I. 1955 No. 1098.)

Cinematograph Act, 1952 (Commencement in England and Wales) Instrument, 1955. (S.I. 1955 No. 1128 (C.8).)

Cinematograph Act, 1952 (Commencement in Scotland) Instrument, 1955. (S.I. 1955 No. 1124 (C.7) (S.111).)

Cinematograph (Children) Regulations, 1955. (S.I. 1955 No. 1131.)

Cinematograph (Children) (Scotland) Regulations, 1955. (S.I. 1955 No. 1138 (S.113).)

Cinematograph (Safety) Regulations, 1955. (S.I. 1955 No. 1129.) 11d.

Cinematograph (Safety) (Scotland) Regulations, 1955. (S.I. 1955 No. 1125 (S.112).) 11d.

Coal Industry Nationalisation (Borrowing Powers) Order, 1955. (S.I. 1955 No. 1083.)

Coal Industry Nationalisation (Variation of Trusts) (Miners' Welfare National Scholarship Endowment Fund) Order, 1955. (S.I. 1955 No. 1061.) 6d.

Coal Industry Nationalisation (Variation of Trusts) (Miners' Welfare National Students Exhibitions Fund) Order, 1955. (S.I. 1955 No. 1062.) 5d.

Companies (Winding-up) (Amendment) Rules, 1955. (S.I. 1955 No. 1077 (L.7).)

As to these rules, see p. 515, *ante*.

Drapery, Outfitting and Footwear Trades Wages Council (Great Britain) Wages Regulation (Amendment) (No. 2) Order, 1955. (S.I. 1955 No. 1089.) 5d.

East Devon Water (No. 2) Order, 1955. (S.I. 1955 No. 1072.) 5d.

Hire-Purchase and Credit Sale Agreements (Control) (Amendment) Order, 1955. (S.I. 1955 No. 1130.) 5d.

As to this order, see p. 531, *ante*.

Motor Vehicles (Variation of Speed Limit) Regulations, 1955.

New Forest (Election of Verderers) (Appointed Date) Order, 1955. (S.I. 1955 No. 1088.)

Retention of Cables, Mains and Pipes under Highways (Lincolnshire–Parts of Lindsey) (No. 4) Order, 1955. (S.I. 1955 No. 1067.) 5d.

Safeguarding of Industries (Exemption) (No. 5) Order, 1955. (S.I. 1955 No. 1063.)

Solicitors' Preliminary Examination (Exemptions) Regulations, 1955. (S.I. 1955 No. 1073.)

These regulations, which came into force on 1st August, replace the similarly named regulations of 1950, as amended in 1952 and 1954. They specify examinations the passing of which exempts from the solicitors' preliminary examination.

Stopping up of Highways (East Sussex) (No. 5) Order, 1955. (S.I. 1955 No. 1065.)

Stopping up of Highways (Gloucestershire) (No. 2) Order, 1955. (S.I. 1955 No. 1057.)

Stopping up of Highways (Leicestershire) (No. 1) Order, 1955. (S.I. 1955 No. 1066.)

Stopping up of Highways (London) (No. 24) Order, 1955. (S.I. 1955 No. 1070.)

Stopping up of Highways (London) (No. 25) Order, 1955. (S.I. 1955 No. 1071.)

Stopping up of Highways (London) (No. 26) Order, 1955. (S.I. 1955 No. 1075.)

Stopping up of Highways (Surrey) (No. 2) Order, 1955. (S.I. 1955 No. 1056.)

Stopping up of Highways (West Riding of Yorkshire) (No. 4) Order, 1955. (S.I. 1955 No. 1064.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, W.C.1. The price in each case, unless otherwise stated, is 4d. post free.]

POINTS IN PRACTICE

Estate Duty—Gift of Freehold Property to Daughter—No Conveyance or Memorandum

Q. Some thirty-five years ago *A* gave to his daughter *B* certain freehold property of a value of perhaps £1,000. No conveyance of the property by *A* to his daughter *B* was ever executed, nor was there any written memorandum or document of any kind regarding the transaction. From the date of the gift, however, *B* entered into receipt of the rents and profits of the property and has paid the rates and other outgoings and has been assessed to Sched. A tax in respect thereof. *A* is now of an advanced age and the question has arisen as to whether, on his death, estate duty will be payable on the property, or whether it can be said that a valid and effectual gift of the property was made by *A* to *B* more than five years before *A's* death. If there had been a conveyance executed thirty-five years ago, no duty could, of course, be chargeable. It appears, however, that as the gift was not completed by a conveyance of the legal estate, the Estate Duty Office might claim that the gift was ineffectual and that the property still forms part of *A's* estate on his death. On the other hand, it appears possible to argue that *B* has now acquired a title by undisputed possession and receipt of the rents and profits for thirty-five years, and that therefore no interest in the property could remain in *A*. Is it considered that on the death of *A* estate duty will be chargeable in respect of the property? If it is thought that there is a danger of duty being chargeable on the property when *A* dies, can the position be improved by *A* executing a conveyance now in which the above facts might be recited and the property conveyed by *A* to *B*? Alternatively, is it considered that what has occurred does not affect the position as to duty, and that the only course is to start afresh with a new deed of gift which will be effective to save duty if *A* lives for a further five years?

A. We do not think it necessary to start afresh with a new deed of gift, which, as you suggest, would ensure that estate duty would be payable unless *A* lived a further five years. We think that it is most highly undesirable for *A* to execute any sort of confirmatory conveyance at this stage, since such a document would almost certainly arouse the worst suspicions of the Estate Duty Office. In our view the key to the position lies in the Limitation Act, 1939. Fortunately *B* was a daughter of *A*, so that the presumption of advancement would rebut any possible resulting trust and it could not be said that *B* had been in possession of the rents and profits as resulting trustee for *A*, with the result that the Limitation Act, 1939, or its predecessors would not apply. (See as to this s. 19 of the 1939 Act.) That being the case we think that *B* should forthwith take steps to make or obtain a statutory declaration in the usual form used when making title by adverse possession. If it were desired to make assurance doubly sure she could, having got such a declaration, proceed to register the land in her own name as absolute owner with possessory title. If *B* had caused such a statutory declaration to be made, thus showing her right and intention to rely on her possessory title, and even more strikingly if she had caused the land to be registered in her own name, we think that it could safely be said that if any interest in the land remained in *A* on his death that interest would be overvalued at, say, £1.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 21 Red Lion Street, London, W.C.1.

They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor has ordered that His Honour Judge Alun Pugh shall be one of the judges, jointly with His Honour Judge Bensley Wells, M.B.E., for the district of Marylebone County Court in addition to the district of Bloomsbury County Court, for which he is already judge.

Mr. G. E. Edmondson-Jones, of Carlisle, has been appointed assistant solicitor to Sutton Coldfield Council in succession to Mr. Henry Waring, who has taken up a similar appointment at Harrow.

Mr. W. A. Leon, an assistant registrar of county courts, has been appointed registrar of the Bromley, Dartford and Woolwich County Courts in place of Mr. T. A. Riches. Mr. T. A. Riches has been appointed registrar of the Bow and Edmonton County Courts in place of Mr. E. A. Everett. Mr. E. A. Everett has been appointed registrar of the Shoreditch and Kingston-upon-Thames County Courts. These arrangements are in consequence of the death of Mr. Gilbert Hicks, C.B.E., who was registrar of the Shoreditch and Kingston-upon-Thames County Courts.

The Queen has appointed Mr. Cecil Campion a Metropolitan Magistrate.

Mr. P. Watkin-Williams, Senior Resident Magistrate, Uganda, has been appointed Puisne Judge in Trinidad and Tobago.

Miscellaneous

EXCHANGE CONTROL ACT, 1947: SECURITIES

Attention is drawn to a new Notice entitled E.C. Securities 11, and to amendments to Notices E.C. Securities 8, 9 and 10, which have recently been issued by the Bank of England on behalf of the Treasury.

The new Notice E.C. Securities 11, which is primarily intended for company secretaries, registrars and paying agents who are concerned with dividends, interest and capital repayments, is also available to authorised depositaries for their information. It replaces E.C. (Securities) 7 and introduces alternatives to the completion of schedules for warrants dispatched abroad. It also indicates the circumstances in which application need not be made to the Bank of England before making extraordinary capital payments.

The amendments to E.C. (Securities) 8 and 10 permit United Kingdom authorised depositaries to accept, with minor exceptions, instructions for the sale and purchase of securities from banks, stockbrokers and solicitors in the Irish Republic and authorise United Kingdom registrars to accept lodgment of forms of transfer, subscriptions, etc., from such persons without declarations or "authorisations."

The amendment to E.C. (Securities) 9 draws attention to the fact that the certificates transferable by endorsement which are now issued by certain Canadian banks require to be deposited under the provisions of the Exchange Control Act and that certificates for shares on the recently established London register of Massey-Harris-Ferguson, Ltd., also require to be so deposited.

Solicitors may obtain copies of the amendments and of E.C. (Securities) 11 either through their local bank or on request direct from the Bank of England.

The Lord Chancellor was represented at a memorial service for Mr. Noel Middleton, Q.C., a bencher of Gray's Inn, which was held on Tuesday, 26th July, by kind permission of the Treasurers and Masters of the Bench of the Inner and Middle Temples, in the Temple Church. The Master of the Temple officiated, and the lesson was read by the Preacher of Gray's Inn, The Rev. Canon F. H. B. Ottley.

DEVELOPMENT PLANS

ISLE OF ELY COUNTY DEVELOPMENT PLAN

On 19th February, 1955, the Minister of Housing and Local Government approved with modifications the above development plan. A certified copy of the plan as approved by the Minister has been deposited at the County Hall, March, and certified copies or extracts of the plan so far as it relates to the undermentioned districts have also been deposited at the places mentioned below:—

Chatteris Urban District, March Urban District, North Witchford Rural District—County Hall, March.

Wisbech Borough, Wisbech Rural District—The County Library, Alexandra Road, Wisbech.

Ely Urban District, Ely Rural District—The Urban District Council Offices, Lynn Road, Ely.

Whittlesey Urban District, Thorney Rural District—The Urban District Council Offices, Delph Street, Whittlesey.

The copies or extracts of the plan so deposited will be open for inspection free of charge by all persons interested between 10 a.m. and 5 p.m. on Mondays to Fridays, and 10 a.m. to noon on Saturdays (excluding Bank Holidays). The plan became operative as from 29th July, 1955, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 29th July, 1955, make application to the High Court.

OXFORDSHIRE DEVELOPMENT PLAN

Proposals for alterations and additions to the above development plan were on 22nd July, 1955, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the Ploughley Rural District. Certified true copies of the proposals as submitted have been deposited for public inspection at the offices of the Clerk of the County Council in the County Hall, Oxford, and at the offices of the Clerk of the Ploughley Rural District Council, Waverley House, Bicester. The copies of the proposals so deposited together with copies or relevant extracts of the development plan are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 9.30 a.m. and 5 p.m. on every weekday except Saturday when they may be inspected between the hours of 9.30 a.m. and 12 noon. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 17th September, 1955, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Oxfordshire County Council and will then be entitled to receive notice of any amendment of the development plan made as a result of the proposals.

COMMONWEALTH AND EMPIRE LAW CONFERENCE

Sir Hartley Shawcross, Q.C., M.P., and Mr. W. Charles Norton (joint presidents of the Commonwealth and Empire Law Conference), with their ladies, received the guests at a dinner given at Guildhall on 27th July. Among the official guests who accepted invitations were: The Archbishop of Canterbury and Mrs. Fisher, the Lord Chancellor and Viscountess Kilmuir, the Prime Minister and Lady Eden, the High Commissioner for Ceylon and Lady Corea, the High Commissioner for the Union of South Africa and Mrs. Jooste, the High Commissioner for India, the High Commissioner for New Zealand and Mrs. Webb, the High Commissioner for Pakistan, the High Commissioner for the Federation of Rhodesia and Nyasaland and Lady Rennie, the Lord Mayor of London and the Lady Mayoress, the Master of the Rolls and Lady Evershed and the Chief Justice of Ontario and Mrs. Pickup.

At The Law Society's Preliminary Examination, held from 4th to 7th July, fourteen out of thirty-six candidates were successful.

Wills and Bequests

Mr. W. G. Pigot, solicitor, of Wigan, left £25,179.

OBITUARY

MR. W. W. DAVIES

Mr. William Wynn Davies, solicitor, of Bracknell, Berks, died on 23rd July, aged 51. He was admitted in 1927.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Town and Country Planning Act, 1954, s. 33

Sir,—Your contributor R.N.D.H. suggests, at p. 503 of your issue of the 23rd July, that local authorities should, where there is no unexercised planning permission, simply reply to applicants under s. 33 (1) that the section does not apply. There is, however, a duty laid upon local authorities by s. 33 (1) to serve a notice in accordance with that subsection and there is nothing in s. 33 which relieves them of that duty. A negative notice may not be of much value to a purchaser where planning permission has not already been granted but, as R. N. D. H. admits in his article, if the answer is positive the purchaser will be glad of the warning.

London, E.C.4. J. T.

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